88-1990

Supreme Court, U.S.
FILED
JUN 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

IN RE

LYNDON H. LAROUCHE, JR.,
WILLIAM WERTZ,
EDWARD SPANNAUS,
MICHAEL BILLINGTON,
DENNIS SMALL,
PAUL GREENBERG and
JOYCE RUBINSTEIN,

Petitioners.

JOINT PETITION FOR WRITS OF HABEAS CORPUS

OF COUNSEL:

BASKIN FLAHERTY
ELLIOTT &
MANNINO, P.C.

CHARLES W. BOWSER
(Counsel of Record)
FRANK H. SHERMAN
SCOTT A. BURR
1800 Three Mellon Bank Center
Philadelphia, PA 19102
(215) 977-7400
Attorneys for Petitioners

PACKARD PRESS / LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

QUESTIONS PRESENTED

1. Whether adequate relief is unavailable from other courts or in other forms.

2. Whether the government's intrusions upon petitioners' First Amendment rights to political expression and association exceeded the narrow parameters of permissible government activity and invalidate their prosecution and resultant confinement.

3. Whether the confinement of petitioners violates United States treaty law and the law of nations protecting the free exercise of political expression.

4. Whether petitioners' Fifth Amendment right to due process is denied by their confinement in violation of customary international law guaranteeing their right of political expression free from undue governmental interference.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
JURISDICTION	1
CLAIM FOR RELIEF FROM UNLAWFUL IMPRISONMENT	1
CONSTITUTIONAL AND TREATY PROVISIONS	3
STATEMENT OF THE CASE	3
A. Petitioners And Their Activities	3
B. The History Of Governmental Intrusion On Petitioners' Rights Of Political Expression And Association	5
REASONS FOR GRANTING THE WRITS	13
I. ADEQUATE RELIEF IS NOT AVAILABLE FROM OTHER COURTS OR IN OTHER FORMS	13
II. THE GOVERNMENT'S INTRUSIONS UPON PETITIONERS' FIRST AMENDMENT RIGHTS TO POLITICAL EXPRESSION AND ASSOCIATION EXCEEDED THE NARROW PARAMETERS OF PERMISSIBLE GOVERNMENT ACTIVITY AND INVALIDATE THEIR PROSECUTION AND RESULTANT CONFINEMENT	15
A. Petitioners' Rights Of Political Association And Expression May Not Be Restricted By Government Action Unless The Government Meets A Rigorous Standard Of Review Established By This Court For Infringements Of First Amendment Rights	15

TABLE OF CONTENTS – *(Continued)*

Page

B. The Excessive Length And Escalating Disruptiveness Of Government Activity Directed Against Petitioners Exceeded The Parameters Within Which Government Conduct May Intrude Upon First Amendment Rights As It Demonstrates That The Governmental Interest Behind The Activity Was Not Unrelated To The Suppression Of Free Expression 18

C. The Government's Failure To Utilize The Least Intrusive Alternative To Achieve Its Asserted Interests Invalidates Petitioners' Convictions And Confinement..... 20

III. THE CONFINEMENT OF PETITIONERS VIOLATES UNITED STATES TREATY LAW AND THE LAW OF NATIONS PROTECTING THE FREE EXERCISE OF POLITICAL EXPRESSION..... 23

A. Petitioners' Detention Violates Rights Guaranteed Under United States Treaty Law 23

B. Petitioners Are Being Detained In Violation Of The "Law Of Nations"..... 27

IV. PETITIONERS' FIFTH AMENDMENT RIGHT TO DUE PROCESS IS DENIED BY THEIR CONFINEMENT IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW GUARANTEEING THEIR RIGHT OF POLITICAL EXPRESSION FREE FROM UNDUE GOVERNMENTAL INTERFERENCE..... 29

TABLE OF AUTHORITIES

Cases: Page

Asakura v. Seattle, 265 U.S. 332 (1924) 24

Bates v. Little Rock, 361 U.S. 516 (1960) 18

Boos v. Barry, 485 U.S. ____ , 99 L.Ed.2d 333 (1988) .. 23

Branzburg v. Hayes, 408 U.S. 665 (1972) 17

Buckley v. Valeo, 424 U.S. 1 (1976) 16, 17, 22

Cantwell v. Connecticut, 310 U.S. 296 (1940) 21

Charlton v. Kelly, 229 U.S. 447 (1913) 26

Daniels v. Williams, 474 U.S. 327 (1986) 29

Diggs v. Richardson, 555 F.2d 848 (D.C. Cir. 1976), *cert. denied,* 429 U.S. 835 (1976) 24

Evans v. Cunningham, 335 F.2d 491 (4th Cir. 1964) 14

Factor v. Laubenheimer, 290 U.S. 276 (1933) 24, 26

Fernandez v. Wilkinson, 505 F.Supp. 787 (D. Kan. 1980), *aff'd on other grounds sub nom. Rodriquez-Fernandez v. Wilkinson,* 654 F.2d 1382 (10th Cir. 1981) 29

Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) 28

Foster v. Neilson, 27 U.S. (2 Pet.) 253 (1829) 24

Healy v. James, 408 U.S. 169 (1972) 18, 23

Houghton v. Scranton, 392 U.S. 639 (1968) 14

In re Primus, 436 U.S. 412 (1978) 17

Kolovrat v. Oregon, 366 U.S. 187 (1961) 24

LaRouche v. Kelley, 522 F.Supp. 425 (S.D.N.Y. 1981) ...7, 18

LaRouche Campaign v. F.B.I., 106 F.R.D. 500 (D. Mass. 1985) 18

Larouche v. Webster, 75 Civ. 6010 (MJL) 7

Cases: Page

Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272 (1856) 29

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 16, 17, 22

Oyama v. California, 332 U.S. 633 (1948) 25

Palko v. Connecticut, 302 U.S. 319 (1937) 29

People of Saipan ex rel. Guerrero v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974), *cert. denied*, 420 U.S. 1003 (1975) 26, 27

Pollard v. Roberts, 283 F.Supp. 248 (E.D. Ark.), *aff'd*, 393 U.S. 14 (1968) 18, 21, 22

Riley v. National Federation of the Blind, 487 U.S. ____ , 101 L.Ed.2d 669 (1988) 16, 21

Rochin v. California, 342 U.S. 165 (1952) 29

Rodriquez-Fernandez v. Wilkinson, 654 F.2d 1382 (10th Cir. 1981) 29

Roth v. United States, 354 U.S. 476 (1957) 16

Saia v. New York, 334 U.S. 558 (1948) 15

Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980) 19, 21

Sei Fujii v. California, 97 A.C.A. 154, 217 P.2d 481 (1950), *aff'd*, 38 Cal.2d 718, 242 P.2d 617 (1952) 24

Shelton v. Tucker, 364 U.S. 479 (1960) 17, 20

Sherbert v. Verner, 374 U.S. 398 (1963) 21

Spannaus v. Federal Election Commission, 641 F.Supp. 1520 (S.D.N.Y. 1986), *aff'd mem.*, 816 F.2d 670 (2d Cir. 1987) 22

The Nereide, 13 U.S. (9 Cranch) 388 (1815) 27

TABLE OF AUTHORITIES – *(Continued)*

Cases:	Page
The Paquete Habana, 175 U.S. 677 (1900)	27
Thomas v. Collins, 323 U.S. 516 (1945)	16, 21
United States v. LaRouche Campaign, 695 F.Supp. 1290 (D. Mass. 1988)	11
United States v. O'Brien, 391 U.S. 367 (1968)	17, 19
United States v. Smith, 18 U.S. (5 Wheat.) 153 (1820)	27
Wayte v. United States, 470 U.S. 598 (1985)	17
Wilwording v. Swenson, 404 U.S. 249 (1971)	14
U.S. Constitution:	
Article II, Section 2, Clause 2	23
Article VI, Clause 2	23
Amendment I	*passim*
Amendment V	3, 29, 30
Statutes:	
2 U.S.C. § 431 *et seq.*	22
18 U.S.C. § 371	2
18 U.S.C. § 1341	2
18 U.S.C. § 2383	5
18 U.S.C. § 2384	5
18 U.S.C. § 3143(b)	14
26 U.S.C. § 9001 *et seq.*	22
26 U.S.C. § 9031 *et seq.*	22
28 U.S.C. § 2241	1
28 U.S.C. § 2243	30
50 U.S.C. §§ 781-798	6

Treaties: Page

United Nations Charter, Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969) ..... *passim*

Organization of American States Charter, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 (*entered into force* Dec. 13, 1951) and *amended* by the Protocol of Buenos Aires, Feb. 27, 1967, T.I.A.S. No. 6847, O.A.S.T. No. 1-A, O.A.S.O.R., O.E.A/Ser. A/2, add. 2 (*entered into force* Feb. 27, 1970) 27

International Human Rights Instruments:

International Covenant On Civil And Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (*entered into force* March 23, 1976)..... 25, 28

Universal Declaration Of Human Rights, G.A. Res. 217A (Ill), U.N. Doc. A/810 at 71 ..... 24, 25, 27, 28

American Convention On Human Rights, Nov. 22 169, O.A.S. T.S. No. 36 at 2, O.A.S. Off. Rec. OEA/Ser. L/V/II 23 doc. 21, rev. 2 (*entered into force* July 18, 1978) 28

American Declaration Of The Rights And Duties Of Man, May 2, 1948, O.A.S. Off. Rec. OEA/SER. L/V/II 23, doc. 21, rev..... 27

European Convention For The Protection Of Human Rights, Sept. 3, 1953, 213 U.N.T.S. 221..... 28

African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Dec. CAB/LEG/67/3 rev. 5 28

Final Act, Conference On Security And Cooperation In Europe, Helsinki, August, 1975, *reprinted in* 73 U.S. State Dept. Bull. 323 (1975)..... 28

Other Authorities: Page

Address by Assistant Secretary of State for Human Rights and Humanitarian Law (March 16, 1978)..... 25, 26

Comment, *Self-Executing Treaties and the Human Rights Provisions of the United Nations Charter: A Separation of Powers Problem,* 25 Buffalo L. Rev. 773 (1976)..... 25

Cox, *Foreward: Freedom of Expression in the Burger Court,* 94 Harv. L. Rev. 1 (1980)..... 15

Declaration of Independence (U.S. 1776), *reprinted in* U.S.C.A. Const. Art. 1 at 1 (West 1987)..... 15, 16

I. Brownlie, *Principles of Public International Law* (3d ed. 1979)..... 25

M. McDougal, H. Lasswell, Lung-Chu Chen, *Human Rights and World Public Order* (1980)..... 27, 28

Memorandum for the United States as Amicus Curiae, *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980) . 28

Memorial of the Government of the United States, *Case Concerning United States Diplomatic and Consular Staff in Teheran (U.S. v. Iran,* 1980 I.C.J. 3), I.C.J. Pleadings 1 (1980)..... 28

Papers of the President, [1977] Pub., pp. 449-50..... 25

Proclamation No. 5357 of July 19, 1985, 3 C.F.R. 70 (1986)..... 26

Proclamation No. 5334 of April 30, 1985, 3 C.F.R. 46 (1986)..... 28

Proclamation No. 4885, 3 C.F.R. 70 (1982)..... 26

Sarosdy, *Jurisdiction Following Illegal Extraterritorial Seizure: International Human Rights Obligations as an Alternative to Constitutional Stalemate,* 54 Tex. L. Rev. 1464 (1976)..... 25

Other Authorities: Page

Senate Select Committee to Study Governmental Operations with Respect To Intelligence Activities Report, reprinted in Sen. Rep. No. 755, Vol. III, at 3, 94th Cong., 2d Sess. (1976) 5, 6, 19

U.S. Department of Justice, Criminal Division, *Federal Prosecution of Election Offenses* 52 (4th ed. Oct. 1984) 20

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

IN RE

LYNDON H. LAROUCHE, JR.,
WILLIAM WERTZ,
EDWARD SPANNAUS,
MICHAEL BILLINGTON,
DENNIS SMALL,
PAUL GREENBERG and
JOYCE RUBINSTEIN,

Petitioners.

JOINT PETITION FOR WRITS OF HABEAS CORPUS

JURISDICTION

This Court has jurisdiction to consider this Joint Petition for Writs of Habeas Corpus pursuant to Title 28, United States Code, Sections 2241(a), 2241(c)(1) and 2241(c)(3).

CLAIM FOR RELIEF FROM UNLAWFUL IMPRISONMENT

Petitioners Lyndon H. LaRouche, Jr., William Wertz, Edward Spannaus, Michael Billington, Dennis Small, Paul Greenberg and Joyce Rubinstein are now unlawfully in custody pursuant to judgment and commitment orders entered by Chief Judge Albert V. Bryan, Jr., of the United States District Court for the Eastern District of Virginia (Ldg. at 8-14).[1]

Petitioners were convicted in the Eastern District of Virginia, Alexandria Division, after a joint trial on Indictment No. CR 88-243-A before Chief Judge Bryan and a jury, of one count

1. "Ldg." refers to the Lodging filed in support of this Joint Petition; "App." refers to the Appendix to this Joint Petition.

of conspiracy to commit mail fraud (18 U.S.C. § 371) and multiple counts of mail fraud (18 U.S.C. § 1341). Petitioner LaRouche was also convicted of one count of conspiracy to impede and impair the Internal Revenue Service (18 U.S.C. § 371).

On January 27, 1989, petitioners were sentenced by Chief Judge Bryan to terms of imprisonment ranging from fifteen to three years[2] and were remanded to custody.

Petitioners LaRouche, Wertz, Spannaus, Billington, Small and Greenberg are in the custody of respondents Roger Ray, United States Marshal for the Eastern District of Virginia, and Sheriff James Dunning, who oversees the Alexandria Detention Center in Alexandria, Virginia, where they are presently incarcerated.

Petitioner Rubinstein is in the custody of respondent Raymond Andrews, Warden of the Alderson Federal Correctional Institution in Alderson, West Virginia, where she is presently incarcerated.

---

2. Petitioner Lyndon H. LaRouche, Jr., was sentenced to serve a total of fifteen (15) years. He received the maximum possible sentence of five (5) years on each of the thirteen counts on which he was convicted. The sentences on three groups of Counts, 1 through 4, 5 through 9 and 10 through 13, run concurrently within the grouping and consecutively to the other two groupings.

Petitioner William Wertz was sentenced to serve five (5) years on each of Counts 1 through 11, with the sentences on all counts running concurrently. In addition, Mr. Wertz was ordered to pay a fine of $11,000.

Petitioner Edward Spannaus was sentenced to serve five (5) years on Count 1 and each of Counts 3 through 11, with the sentences on all of those counts running concurrently. In addition, Mr. Spannaus was ordered to pay a fine of $10,000.

Petitioner Michael Billington was sentenced to serve three (3) years on each of Counts 1, 2, 4 and 5, with the sentences on all counts running concurrently. In addition, Mr. Billington was ordered to pay a fine of $8,000.

Petitioner Dennis Small was sentenced to serve three (3) years on each of Counts 1, 3, 8 and 10, with the sentences on all counts running concurrently. In addition, Mr. Small was ordered to pay a fine of $8,000.

Petitioner Paul Greenberg was sentenced to serve three (3) years on each of Counts 1, 9 and 11, with the sentences on all counts running concurrently. In addition, Mr. Greenberg was ordered to pay a fine of $6,000.

Petitioner Joyce Rubinstein was sentenced to serve three (3) years on each of Counts 1, 6 and 7, with the sentences on all counts running concurrently. In addition, Ms. Rubinstein was ordered to pay a fine of $6,000.

The acts for which petitioners have been investigated and prosecuted, as described in this petition, were acts in the exercise of petitioners' rights of political association and political expression. Petitioners' prosecution was designed and intended by the prosecuting officials to harass them and other persons working to promote their political ideas and beliefs, and to chill and suppress their exercise of federally protected rights of political association and political expression.

Petitioners' imprisonment is in violation of the First Amendment of the Constitution, the Due Process Clause of the Fifth Amendment of the Constitution, the United Nations Charter, and the principle of freedom of political expression found in customary international law.

The jurisdiction of this Court is invoked to release petitioners from the custody of respondents in violation of the Constitution, laws and treaties of the United States.

CONSTITUTIONAL AND TREATY PROVISIONS

This case involves the First and Fifth Amendments of the United States Constitution and the United Nations Charter.

STATEMENT OF THE CASE

A. PETITIONERS AND THEIR ACTIVITIES

1. The petitioners are all members of the National Caucus of Labor Committees ("NCLC"), an unincorporated political and philosophical association. The NCLC is the United States branch of the International Caucus of Labor Committees, which is a political association functioning in the United States, Western Europe, Central and South America, Canada and Asia, principally. The SDS Labor Committee was the predecessor organization to the NCLC. Since its inception, the NCLC has been engaged in the promulgation and promotion of political, social, and economic ideas.

2. NCLC members have been involved since the organization's founding in the publication and distribution of magazines, newspapers, reports, and other publications to promote and encourage the political ideas which those members support. The publications have included New Solidarity and Campaigner Magazine, and now include Executive Intelligence Review ("EIR"). Over a period of years, various members of the NCLC

have organized or become associated with entities, both corporate and non-corporate, which functioned to publish, sell, and otherwise disseminate these publications. These entities included Campaigner Publications, Inc. ("CPI"), Caucus Distributors, Inc. ("CDI"), Fusion Energy Foundation, Inc. ("FEF"), New Benjamin Franklin House Publishing Co., Inc., and Publications and General Management Co. ("PGM").

3. Petitioner LaRouche is an author, economist and co-founder of the National Caucus of Labor Committees and the U.S. Labor Party.[3] Petitioner LaRouche ran for the office of President of the United States in 1976, 1980, 1984 and 1988.

4. Petitioner William Wertz has been a member of the NCLC since 1972. From 1984 until 1989, Wertz coordinated sales and fundraising activities for the above-mentioned organizations nationwide. He recently worked as sales manager for PGM. Petitioner Wertz was a U.S. Labor Party candidate for the United States Senate from Washington in 1976 and sought the Democratic Party nomination for the United States Senate from California in 1982.

5. Petitioner Edward Spannaus has been a political associate of petitioner LaRouche since 1968, helping to found the SDS Labor Committee and, later, the NCLC. Spannaus has primarily concentrated his efforts in coordinating the legal affairs of the above-mentioned entities and the LaRouche movement. Spannaus also served as Treasurer of LaRouche's 1984 and 1988 campaigns for the Democratic Party presidential nomination.

6. Petitioner Michael Billington has been a member of the NCLC since 1972. Since 1980, Billington has worked as a political organizer, salesman and fundraiser for the LaRouche presidential election campaigns and for LaRouche-associated publications efforts.

7. Petitioner Dennis Small has been a member of the NCLC since 1971. From 1974 to the present, he has served as Latin American editor of EIR magazine.

---

3. The U.S. Labor Party was a political party founded by members of the NCLC which functioned actively throughout the United States by promoting its political policies and running candidates for public office during the period from 1973 through 1979. In 1979, many of the leading members of the U.S. Labor Party joined the Democratic Party. The U.S. Labor Party became defunct as an active political organization at that point.

8. Petitioner Paul Greenberg has been a member of the NCLC since 1972. From 1980 until the conviction leading to his present incarceration, Greenberg was a political organizer, salesman and fundraiser for enterprises associated with the LaRouche movement. Greenberg was a U.S. Labor Party candidate for Congress from Iowa in 1974 and from Wisconsin in 1978.

9. Petitioner Joyce Rubinstein has been a political associate of petitioner LaRouche since 1976. Rubinstein was a political organizer from 1979 to 1987, after which she joined the economics staff of EIR News Service and served as a writer until her indictment in the Eastern District of Virginia.

B. THE HISTORY OF GOVERNMENTAL INTRUSION ON PETITIONERS' RIGHTS OF POLITICAL EXPRESSION AND ASSOCIATION

10. The government has investigated the federally protected political activities of petitioners almost continuously from in or about 1968 to 1988.

11. As early as 1968, the FBI began to conduct an investigation of the SDS Labor Committee, the forerunner of the NCLC (App. at A-87, A-116). This investigation was part of the FBI's Counterintelligence Program ("COINTELPRO"), a series of covert action programs directed against domestic groups.[4]

12. From 1969 through 1977, the FBI conducted an "internal security" investigation (later captioned "domestic security") of the NCLC and its members. This investigation was terminated without a single federal indictment, although the FBI investigated the NCLC and its members for a myriad of potential violations, including rebellion or insurrection (18 U.S.C. § 2383), seditious conspiracy (18 U.S.C. § 2384), and

4. In 1976, a bi-partisan committee of the United States Senate reported that COINTELPRO was "a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association." *Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities Report, reprinted in* Sen. Rep. No. 755, vol. III, at 3, 94th Cong., 2d Sess. (1976) [hereinafter cited as Church Committee Report]. The program's secret actions were "designed to 'disrupt' and 'neutralize' target groups and individuals." *Id.* With reference to COINTELPRO, the Senate Committee reported: "Whatever opinion one holds about the policies of the targeted groups, many of the tactics employed by the FBI were indisputably degrading to a free society." Church Committee Report, vol. II, at 10.

violation of the Internal Security Act of 1950 and the Communist Control Act of 1954 (50 U.S.C. §§ 781-798) (Ldg. at 15, 17).

13. One example of the FBI's effort to discover ways to prosecute NCLC members involved a 1975 incident in which the supervisor of the NCLC investigation at FBI headquarters called the FBI field office in New Haven seeking a prosecution of NCLC members based on a telephone conversation monitored by the FBI without legal justification. A memorandum of the supervisor's call (Ldg. at 21-22) states as follows:

> On 6/13/75, Supervisor JAMES GERBLICK, Extension 4575, from Division 5 at the Bureau, called . . . . He advised that he is the Supervisor handling the NCLC . . . .
>
> Supervisor GERBLICK stated AUSA NORRIS should be specifically asked whether possibly Title 18, Section 1510, Obstruction of Criminal Investigations, could be applicable in this instance. He further advised that the Bureau is very interested in having successful prosecution in some federal judicial district so that this matter can serve as an example for other judicial districts.
>
> He stated that in the event AUSA NORRIS is of the opinion that Section 1510 does not apply, the New Haven Office should give serious consideration to discontinuing monitoring telephone conversations since there is no legal justification for doing so.
>
> He further stated that some offices have had considerable success in having local authorities proceed under local statutes against NCLC members since many State laws and city ordinances might apply where there is no federal statute.

14. The reference to local authorities in the above-quoted memorandum refers to literally hundreds of "nuisance" arrests of NCLC members, during particularly 1975 and 1976, usually charging violations of local soliciting or traffic ordinances.[5]

15. The state and local "nuisance" arrests, coordinated by the FBI, were directed at the First Amendment activity of NCLC members, who distributed and sold political literature, and made contacts at plant gates, street corners, and shopping centers.

---

5. The use of local authorities to disrupt targeted activities was a recognized COINTELPRO technique of the FBI. Church Committee Report, vol. III, at 57.

16. The FBI domestic security investigation was national in scope. As part of the "investigation," FBI agents at times engaged in efforts to prejudice local law enforcement authorities against petitioners and petitioners' organizations (Ldg. at 21-22, 114-15).

17. Petitioners sought the protection of their rights in the courts. In 1975, petitioners LaRouche and Spannaus, together with other members of the NCLC, filed a complaint alleging violations of their civil rights in the United States District Court for the Southern District of New York against various officials of the FBI and Department of Justice. That lawsuit, entitled *LaRouche v. Webster,* 75 Civ. 6010 (MJL), is still pending. In 1977, as part of that litigation, the defendants therein consented not to interfere with petitions and with normal electoral processes engaged in by NCLC and U.S. Labor Party members. *See LaRouche v. Kelley,* 522 F.Supp. 425, 430 (S.D.N.Y. 1981). The full domestic security investigation of the NCLC and its members was officially discontinued by the FBI on September 13, 1977 (Ldg. at 28, 60).

18. At an early date, the FBI was interested in the sources of income for the NCLC (Ldg. at 29-53), and took actions aimed at both uncovering the funding base for the group and interfering with that base in order to disrupt the group's activities. For example, in the 1970's the FBI gathered information about NCLC members who were thought to be contributing large sums of money to the NCLC (Ldg. at 54-56). This government focusing on financing continued from the inception of the FBI's investigation of the NCLC to the ultimate prosecution of petitioners, and was the major component of the investigation which resulted in the petitioners' indictment and conviction.

19. During the presidential campaign in 1980, the Public Integrity Section of the Justice Department initiated an FBI investigation of possible contributions by foreign nationals to the LaRouche campaign (Ldg. at 57). No indictments resulted from that investigation.

20. Petitioner LaRouche's political activities and the sources of the movement's income were the subjects of a January 12, 1983, memorandum from former FBI Director William H. Webster to Oliver Revell, Assistant Director of the FBI's Criminal Investigative Division, requesting any information on

the funding of the U.S. Labor Party and Lyndon LaRouche (Ldg. at 58). Director Webster stated that the issues had been raised at a meeting of the President's Foreign Intelligence Advisory Board ("PFIAB"):

> At the PFIAB meeting today, David Abshire raised the subject of the activities of the U.S. Labor Party and Lyndon LaRoche [sic]. . . . A number of the members present, including Edward Bennett Williams, raised the question of the sources of funding for these U.S. Labor Party activities. In view of the large amounts obviously being expended worldwide, the question was raised whether the U.S. Labor Party might be funded by hostile intelligence agencies.
>
> Can you give me an update together with any comments or observations on this matter?

21. On February 1, 1983, a staff memorandum to Revell regarding Director Webster's request reported that there was no active foreign counterintelligence or domestic security investigation of the U.S. Labor Party or LaRouche. The memorandum did refer to an open investigation of the "Lyndon R. LaRoche [sic] Group." The FBI had received a complaint of harassment by LaRouche associates from former Secretary of State Henry Kissinger which it had referred to the Justice Department. The Civil Rights Division of the Justice Department concluded that no violation of the federal civil rights statutes was revealed in the complaint. The FBI also concluded it raised no domestic intelligence concerns. However, shortly after Director Webster's inquiry of January 12, 1983, the FBI initiated an investigation of Kissinger's complaint for the Criminal Division of the Department. That criminal investigation was terminated without indictments in December 1983 (Ldg. at 59-71).

22. Government attempts to disrupt the NCLC and petitioners' political activities and cripple their fundraising reached a peak with the investigation which culminated in the Eastern District of Virginia prosecution and an earlier related prosecution in Boston.

The Boston U.S. Attorney's Office Prosecution

23. The petitioners' convictions are the result of a four-year national investigation which originated in Boston, Massachusetts, during late October, 1984. The initial targets of this

investigation were the two campaign committees of petitioner LaRouche's 1984 bid for the presidency.[6] The focus of this national Justice Department probe was allegations of credit card and loan fraud in connection with campaign fundraising.

24. On November 1, 1984, five days before Election Day, Richard Egan, a Special Agent of the FBI in Boston, telephoned First Fidelity Bank, N.A., in Newark, New Jersey, the campaign depository of TLC and IDL, and informed the bank that a grand jury subpoena had been issued for the records of the two committees. As a result of this phone call, the bank cancelled the credit card merchant accounts of the two committees and froze all funds on deposit. The bank's action prevented IDL from making payment for a nationwide election eve half-hour television broadcast by petitioner LaRouche (App. at A-133-34).

25. Similar government contacts with other banks having accounts of LaRouche-associated organizations caused seizures of funds on deposit or the closing of accounts. The government's activities with the banks fostered credit card chargebacks and created conditions where loans could not be repaid, thus enhancing the allegations in the government's own investigation.

26. On March 11, 1985, U.S. District Judge Harold Ackerman in the District of New Jersey ruled that First Fidelity Bank's seizure of campaign monies had been illegal (App. at A-128-46). The government's strategy to suppress petitioners' political expression and association, however, continued.

27. On December 27, 1985, Stephen S. Trott, the Assistant Attorney General for the Criminal Division at the Department of Justice, sent a letter to the U.S. Attorneys in Boston and five other districts with respect to the national investigation of LaRouche-associated organizations and fundraisers (Ldg. at 76).

28. On or about January 16, 1986, the FBI in Boston sent a teletype to FBI headquarters and eight FBI field offices (including Alexandria) concerning the investigation of alleged

---

6. The LaRouche Campaign ("TLC") was the principal authorized campaign committee for the 1984 presidential primary election campaign of petitioner LaRouche, who sought unsuccessfully the Democratic Party's nomination for President of the United States. Independent Democrats for LaRouche ("IDL") was the principal authorized campaign committee during the period from June to November, 1984, when petitioner LaRouche held himself out as an independent candidate for President in the 1984 presidential general election.

illegal fundraising by the LaRouche campaign. The FBI teletype announced a conference to be held in Boston on February 12-14, 1986, "to share information and coordinate efforts in the investigation of the wide-spread fundraising fraud by the Lyndon LaRouche campaign organization and related entities." (Ldg. at 72-77).

29. The government's Boston "LaRouche Conference" did indeed take place as scheduled and included participants from Alexandria, Boston, Chicago, Los Angeles, Philadelphia, San Francisco, FBI Headquarters and the Department of Justice. No investigation of petitioners prior to that time had resulted in a federal indictment. One of the key objectives of the conference was to discuss the various prosecutorial theories that might be pursued in a national prosecution of the "LaRouche organizations." Among the theories discussed were mail fraud, wire fraud and tax violations (Ldg. at 78-81).

30. In March 1986, two associates of petitioners won the Democratic Party nominations for Lieutenant Governor and Secretary of State in Illinois. The elections to those offices were held in November 1986.

31. On October 6, 1986, less than one month before Election Day, the coordinated strategy by federal and state authorities to suppress petitioners' political activities resulted in a raid by 400 federal and state law enforcement officials on the political headquarters of petitioners at Leesburg, Virginia, and the seizure of approximately two million pages of documents. On the same day, a federal grand jury returned an indictment in Boston, Massachusetts, charging wire fraud, criminal contempt and conspiracy to obstruct justice against petitioner Billington and ten LaRouche associates, as well as NCLC, CPI, CDI and the two campaign committees of the 1984 LaRouche presidential campaign. The alleged fraudulent scheme was national in scope. These events on October 6 substantially disrupted the final stages of the 1986 election campaigns.

32. On December 16, 1986, the Boston grand jury returned a superseding indictment adding petitioner Spannaus and two others in the conspiracy to obstruct justice count. The superseding indictment also alleged a nationwide mail fraud scheme involving the solicitation of loans and the issuance of promissory notes.

33. On June 30, 1987, the Boston grand jury issued a second superseding indictment adding petitioner LaRouche to the conspiracy to obstruct justice count and reaffirming the national scope of the prosecution (App. at A-12-38).

34. Each of the government actions mentioned above generated substantial amounts of publicity adverse to petitioners (*See, e.g.*, Ldg. at 82-112).

35. Jury selection in Boston commenced on September 21, 1987. Trial of petitioners LaRouche and Spannaus and most of their co-defendants began on December 17, 1987, before United States District Judge Robert E. Keeton. Petitioner Billington had been severed in June 1987 and was to be tried later on the Boston federal charges. On May 4, 1988, a mistrial was declared by Judge Keeton.

36. According to the May 5, 1988 Boston Herald, the jurors polled themselves after the declaration of mistrial and "unanimously decided they'd find LaRouche, six aides, and five organizations innocent of all charges based on evidence presented since the trial began Dec. 17." One of the jurors cited government misconduct as a compelling factor in his vote. " 'It seemed some of the government's people caused the problem (for LaRouche),' said [the juror], adding that evidence showed people working on behalf of the government 'may have been involved in some of this fraud to discredit the campaign.' " (Ldg. at 113).

37. The Boston prosecutors immediately sought to schedule a new trial date. The defendants opposed a second prosecution on the grounds of governmental misconduct and double jeopardy. While Judge Keeton found that "institutional and systemic prosecutorial misconduct" occurred during the first trial, he found that the misconduct was not "deliberate" or "intentional" on the part of the individual prosecutors trying the case, *United States v. LaRouche Campaign*, 695 F.Supp. 1290, 1314-16 (D. Mass. 1988), and denied the defendants' motions.

The Alexandria U.S. Attorney's Office Investigation

38. United States Attorney Henry Hudson opened an investigation of petitioner LaRouche and associates within days of taking office as the United States Attorney for the Eastern District of Virginia in the summer of 1986.

39. Hudson and Assistant United States Attorney Kent Robinson were active planners and participants with officials of the Department of Justice and the U.S. Attorney's Office for the District of Massachusetts in the search and seizure which took place in Leesburg, Virginia, on October 6-7, 1986.

40. Robinson began presenting evidence to a federal grand jury in Alexandria, Virginia, in or about November of 1986.

41. On April 20, 1987, the government sought and obtained an *ex parte* order from the United States Bankruptcy Court for the Eastern District of Virginia, directing the appointment of interim trustees to take control of three organizations operated by associates of petitioner LaRouche. On April 21, 1987, U.S. Marshals seized and locked the offices of the three companies in Leesburg, Virginia, and in other cities. The companies affected were CPI, FEF and CDI.

42. The actions described in paragraph 41 were undertaken in connection with the filing of petitions to place the three companies in involuntary bankruptcy under Chapter 7 of the United States Bankruptcy Code. These petitions, filed by United States Attorney Hudson, represent the first time in our Nation's history that the United States government has acted as a petitioning creditor under the Bankruptcy Code. As a result of this Justice Department action, two publications with a combined circulation of over 250,000 copies per issue were shut down.

43. A trial on the propriety and sufficiency of the government's petitions was conducted in the United States Bankruptcy Court for the Eastern District of Virginia on May 4-9, 1988. That court has not yet issued a ruling.

44. Although retrial was originally set for October 1988 in the Boston case, an interlocutory appeal by defendants to the First Circuit Court of Appeals from the denial of their motion to dismiss the indictment resulted in the Boston retrial date being moved to January 3, 1989.

45. While the Boston defendants' motion to dismiss on double jeopardy grounds was pending before the First Circuit on appeal and retrial was scheduled to begin on January 3, 1989, the government saw a "window of opportunity" in the Eastern District of Virginia, where there had been two years of grand jury investigation of NCLC members. The result was the indictment on October 14, 1988, of LaRouche, Spannaus,

Billington and the other petitioners here, which the government pushed to a final verdict prior to the scheduled Boston trial date. Trial before Chief Judge Bryan in Alexandria, Virginia, commenced on November 21, 1988. On December 16, 1988, the jury returned guilty verdicts. Petitioners are currently appealing their convictions before the United States Court of Appeals for the Fourth Circuit.[7]

REASONS FOR GRANTING THE WRITS

I. ADEQUATE RELIEF IS NOT AVAILABLE FROM OTHER COURTS OR IN OTHER FORMS

Petitioners seek the immediate exercise of this court's discretionary power in light of the following exceptional circumstances:

a. Petitioners are imprisoned pursuant to the judgment and commitment orders entered by the Chief Judge of the United States District Court for the Eastern District of Virginia, the Honorable Albert V. Bryan, Jr.

b. As set forth below, petitioners' imprisonment is in violation of their rights of political expression and association guaranteed by, *inter alia*, the First Amendment of the Constitution of the United States.

c. The sentencing court has expressed clearly its rejection of any notion that petitioners' prosecution was an effort to punish or prevent the exercise of their rights of political expression and association. At the sentencing hearing on January 27, 1989, Chief Judge Bryan stated:

> [T]he defendants have repeatedly and from some of the testimony, raised this idea that this is a politically inspired, politically-motivated prosecution. I reject that as errant nonsense. The idea that this organization is a sufficient threat to anything, that would warrant the Government bringing a prosecution to silence them is, just defies human experience.

(App. at A-5.)

d. The sentencing court also viewed evidence of the magnitude of government activities directed against the finances and political activities of petitioners and their associates to be

7. Following the conviction of petitioners in the Eastern District of Virginia, the government dismissed the Boston charges, over the objections of petitioners LaRouche, Spannaus and Billington.

separate and distinct from the issues raised in the indictment. This was the basis for its granting of the government's motion *in limine* prior to trial, which sought to preclude evidence of vindictive prosecution, harassment and "financial warfare" by the government. Chief Judge Bryan's ruling limited the petitioners to showing that there were "unexpected actions" which had the effect of frustrating their expectation that loan repayments would be made (App. at A-82). The sentencing court effectively ruled that the government's intrusions on petitioners' rights of expression and association were not relevant to the propriety of their convictions on the charges in the indictment.

e. The district court's above-quoted remarks at sentencing and its decision sustaining the government's motion *in limine* makes filing this Joint Petition in that court a futile act, ineffective to test the legality of petitioners' detention. *Cf. Wilwording v. Swenson*, 404 U.S. 249 (1971) (federal habeas relief available despite failure to pursue possible state remedies which would have been an exercise in futility); *Houghton v. Scranton*, 392 U.S. 639 (1968) (exhaustion of administrative remedy not required where probably futile); *Evans v. Cunningham*, 335 F.2d 491, 492-94 (4th Cir. 1964) (exhaustion of state remedies which are futile not necessary for federal habeas consideration).

f. On January 27, 1989, Chief Judge Bryan denied each petitioner's application for bail pending appeal and remanded the petitioners into custody (App. at A-4-8). Petitioners sought immediate relief from the Fourth Circuit Court of Appeals. On January 31, 1989, their initial request was denied by Judge Butzner. The request for release pending appeal was renewed to a three-judge panel. On April 14, 1989, this request was denied without hearing or opinion (App. at A-9). Petitioners' motion for reconsideration was also denied by the Fourth Circuit panel without opinion on April 25, 1989 (App. at A-10).

g. One of the issues that is being raised on appeal, which the petitioners suggested to the Fourth Circuit warranted the granting of bond pending appeal, was the trial judge's granting of the government's motion *in limine* barring the introduction of defense evidence at trial about government activities directed against petitioners and their political associates (App. at A-77-83). In denying petitioners' motion for bond pending appeal pursuant to 18 U.S.C. § 3143(b), the Fourth Circuit apparently

concluded that this issue does not raise a "substantial question of law or fact" likely to result in reversal or an order for a new trial. This apparent conclusion on the part of the Fourth Circuit makes filing this Joint Petition before that court an equally futile act to test the legality of petitioners' detention.

h. On May 5, 1989, the petitioners renewed their request for release pending appeal in the Fourth Circuit in an application directed to Chief Justice Rehnquist of this Court. This application was denied by the Chief Justice on May 11, 1989 (App. at A-11).

i. At this time, the granting of habeas corpus relief by this Court is effectively the only means available to secure petitioners' immediate release from unlawful confinement.

II. THE GOVERNMENT'S INTRUSIONS UPON PETITIONERS' FIRST AMENDMENT RIGHTS TO POLITICAL EXPRESSION AND ASSOCIATION EXCEEDED THE NARROW PARAMETERS OF PERMISSIBLE GOVERNMENT ACTIVITY AND INVALIDATE THEIR PROSECUTION AND RESULTANT CONFINEMENT.

A. Petitioners' Rights of Political Association and Expression May Not Be Restricted By Government Action Unless the Government Meets A Rigorous Standard of Review Established By This Court For Infringements of First Amendment Rights.

It is the philosophical linkage of the First Amendment to the Declaration of Independence (U.S. 1776), *reprinted in* U.S.C.A. Const. Art. 1 at 1 (West 1987), that makes it primary[8] among the rights and provisions of the Constitution. The thesis of the Declaration of Independence was set forth in its second paragraph:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That

8. Cox, *Foreword: Freedom of Expression in the Burger Court*, 94 Harv. L. Rev. 1, 1 (1980) ("freedom of conscience and expression enjoys primacy in our scale of rights"); *Saia v. New York*, 334 U.S. 558, 562 (1948) ("freedoms of the First Amendment" occupy "a preferred position").

> whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The First Amendment's restriction on the power of Congress to inhibit freedom of expression is an echo of specific grievances against the British crown enumerated in the Declaration of Independence, and a succinct expression of the Declaration's thesis:

> Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

The First Amendment protects political association as well as political expression. *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). While these rights have never been held by this Court to be absolute, they have consistently been recognized as fundamental and at the foundation of our free society, thus permitting only the narrowest range of restriction. *Id.* at 25; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-61 (1958); *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

In *Roth v. United States*, 354 U.S. 476, 488 (1957), this Court commented on the importance of the First Amendment's protection of fundamental freedoms and the narrow parameters within which government intrusion on those rights may be permissible:

> The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.

In *Riley v. National Federation of the Blind*, 487 U.S. ___, ___, 101 L.Ed.2d 669, 683-85 (1988), this Court reiterated the limits on permissible government intrusion when it held that "government regulation of speech must be measured in minimums, not maximums."

Governmental action which may have the effect of curtailing the freedoms of association and expression are subject to the

closest scrutiny. *Buckley v. Valeo*, 424 U.S. at 25. This is true whether the intrusion arises from direct government action or as an unintended but inevitable result of the government's conduct. *Id.* at 65. Where there are encroachments on these fundamental rights by the government's investigative or prosecutorial activities, this Court's prior decisions establish that the government's conduct must meet a rigorous standard of review: first, that the official action adversely impacting on First Amendment rights be justified by "a public interest that is 'compelling' or 'paramount,' " *Branzburg v. Hayes*, 408 U.S. 665, 680 (1972); *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 463, and, second, that "the infringement of protected First Amendment rights must be no broader than necessary to achieve a permissible governmental purpose. . . ." *Branzburg v. Hayes*, 408 U.S. at 699. *Accord, In re Primus*, 436 U.S. 412, 432 (1978); *Buckley v. Valeo*, 424 U.S. at 68; *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

In the context of a criminal prosecution, this Court has further delineated the conditions under which government regulation which places incidental limitations on First Amendment freedoms is justified:

> [I]f it is within the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Wayte v. United States, 470 U.S. 598, 611 (1985), *quoting United States v. O'Brien*, 391 U.S. 367, 377 (1968).

Even assuming the first two *Wayte* conditions are met with regard to the government's twenty-year history of activity against petitioners, the government interests ostensibly furthered by that activity — protecting national security, maintaining the existing social and political order and preventing fraud[9] — were not, when viewed in their totality, unrelated to the suppression of free expression nor was the resultant restriction

9. Without conceding that their conduct necessitated government activity, petitioners presume that the first two listed interests were the basis for the COINTELPRO and domestic security conduct by the FBI, *see* pp. 5-7 *supra*, and that the last is asserted as the governmental interest behind the prosecution of petitioners.

on First Amendment rights the minimal limitation necessary to achieve the governmental interests. Accordingly, petitioners' confinement results from a prosecution which was constitutionally impermissible.

B. The Excessive Length And Escalating Disruptiveness Of Government Activity Directed Against Petitioners Exceeded The Parameters Within Which Government Conduct May Intrude Upon First Amendment Rights As It Demonstrates That The Governmental Interest Behind The Activity Was Not Unrelated To The Suppression Of Free Expression.

Discrete conduct, reviewed separately, may not violate the narrow parameters within which government conduct is permissible, but the mandate of the First Amendment requires the Court to review the totality of government intrusions, even subtle and indirect intrusions. The Court is "not free to disregard the practical realities." *Healy v. James*, 408 U.S. 169, 183 (1972). The freedoms of expression and association "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).

In this case, as set forth *supra* at pages 5 to 13, petitioners were subjected to continuous government intrusions upon their rights of political expression and association for almost twenty years prior to their prosecution. Petitioners and their associates diligently and persistently objected to the intrusions and asserted their First Amendment rights.[10] While the lower courts rejected petitioners' objections to intrusions upon their rights, they limited their review to discrete acts and ignored the mosaic of intrusive government conduct.

It would be naive not to recognize that continuous government investigative activity over an extended period into political expression and fundraising is more detrimental in its cumulative effect than when each activity is reviewed separately. *Cf. Pollard v. Roberts*, 283 F.Supp. 248, 258 (E.D. Ark.), *aff'd*, 393 U.S. 14 (1968) (per curiam). Moreover, when this continuous activity against politically active people escalates over time in its disrupting effect, the asserted legitimate governmental interests

10. *See, e.g., LaRouche v. Kelley*, 522 F.Supp. 425 (S.D.N.Y. 1981); *LaRouche Campaign v. F.B.I.*, 106 F.R.D. 500 (D. Mass. 1985).

no longer can be viewed as unrelated to the suppression of free expression. As the Church Committee Report stated, COINTELPRO-type activities may continue under the rubric of "investigation":

> Aggressive investigation continues, and may be even more disruptive than covert action. An anonymous letter (COINTELPRO) can be ignored as the work of a crank; an overt approach by the Bureau ("investigation") is not so easily dismissed. The line between information collection and harassment can be extremely thin.

Church Committee Report, vol. III, at 12-13 (footnote omitted).

In the present case, the government's massive investigative assault on the fundraising conduct of petitioners and their associates, following years of government effort to find other prosecutable offenses committed by these persons, mandates the conclusion that "the alleged governmental interest in reguating [petitioners' fundraising] conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." *United States v. O'Brien*, 391 U.S. at 382.[11] This conclusion is borne out by statements of government officials. An article in the *New York Times* (App. at A-147-49), entitled "LaRouche Holdings Seen as Imperiled by Inquiry Into Fund Raising," which was published shortly after the government's raid in Leesburg, cites the following statements:

> Federal law-enforcement officials have said their best hope of disrupting Mr. LaRouche's activities may be found in the thousands of documents seized earlier this month in a raid on his headquarters in Virginia.
>
> • • •
>
> A Justice Department official said, however, that evidence gathered in the raid on Mr. LaRouche's offices could eventually cripple the fund-raising campaign.

N.Y. Times, Oct. 29, 1986, at A28. A clearer expression of the government's improper purpose in seeking a prosecution and

---

11. This Court has previously recognized that there is protected speech integral to the conduct of soliciting financial support:

> [S]olicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues . . . .

Schaumberg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980).

confinement—*i.e.*, to silence petitioner LaRouche and his political associates—could hardly be imagined.

The timing of government activity also belies a benign interest in law enforcement. In 1984, grand jury subpoenas were issued five days before the general election (see p. 9, ¶ 24 *supra*). In 1986, the initial Boston indictment and the Leesburg raid occurred less than one month before Election Day (see p. 10, ¶ 31 *supra*). In 1988, the government obtained the Eastern District of Virginia indictment of petitioners approximately three weeks before the general election (see p. 12, ¶ 45 *supra*). In each of those years, petitioner LaRouche or his political associates was a candidate for office. The timing of these activities contravenes the routine practice of the Department of Justice in dealing with criminal investigations which relate to ongoing elections:

> The normal posture of the Federal Government in election fraud matters is to refrain from intervening in an ongoing elective contest in such a way that the investigation is allowed to become a campaign issue. This customarily requires that most, if not all, investigation of a matter await the conclusion of the election involved.

U.S. Department of Justice, Criminal Division, *Federal Prosecution of Election Offenses* 52 (4th ed. October, 1984).

The tainting of the government's allegedly legitimate interest in punishing petitioners for criminal activity with a desire to suppress their free expression and association by investigation and prosecution runs afoul of the First Amendment and invalidates their convictions.

C. The Government's Failure To Utilize The Least Intrusive Alternative To Achieve Its Asserted Interests Invalidates Petitioners' Convictions And Confinement.

First Amendment jurisprudence does not accord wide discretion to the government to abridge protected freedoms in pursuing its legitimate and compelling interests. This Court has rejected government regulation of fundamental personal liberties which was in furtherance of a compelling interest when the means employed to achieve the government's purpose would broadly stifle First Amendment rights. *Shelton v. Tucker,* 364 U.S. 479, 488 (1960). This is a case in which the government, despite available alternative means to accomplish its purpose,

did not minimize its infringement of petitioners' First Amendment rights to political expression and association. Rather, the government imposed the most drastic means available, criminal prosecution, to accomplish its apparent purpose of preventing fraudulent conduct. This Court should invalidate the petitioners' convictions as an unnecessary abridgement of associational freedoms.

Petitioners do not contest that the government has a legitimate interest in preventing fraud. This, however, only begins the analysis when this interest intersects with the realm of political speech. As this Court has noted,

> the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses [including resort to false statement], these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Cantwell v. Connecticut, 310 U.S. 296, 310 (1940). Accordingly, a balancing of competing interests is required to prevent an unnecessary infringement. "In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Id.* at 304. It is incumbent upon the government to demonstrate that no alternative forms of regulation would combat the alleged fraudulent activity without an equally severe infringement on First Amendment rights. *Sherbert v. Verner,* 374 U.S. 398, 407 (1963).

Fundraising in support of political activities falls within the realm of protected speech. *See Schaumberg v. Citizens for a Better Environment,* 444 U.S. 620, 632 (1980); *Thomas v. Collins,* 323 U.S. 516, 540-41 (1945). While vigorous enforcement of antifraud laws to prohibit fundraisers from obtaining money on false pretenses or by making false statements may be a permissible means of regulation, *see Riley v. National Federation of the Blind,* 487 U.S. __, __, 101 L.Ed.2d 669, 692 (1988), more benign and equally narrow options were available.

The government's decision to use criminal investigation and prosecution as the remedy for conduct of petitioners perceived to be wrongful was an escalation of government activity designed to have the maximum negative impact on petitioners' rights of political expression and association. As the court stated in *Pollard v. Roberts, supra:*

> [M]any people doubtless would prefer not to have their political party affiliations and their campaign contributions disclosed publicly or subjected to the possibility of disclosure merely because an officer or agency clothed with investigatory powers may suspect that some members of their party may have violated the law. Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.

283 F.Supp. at 258. This is particularly true of a minority party. *Id.; see Buckley v. Valeo,* 424 U.S. at 71. Apart from the obvious political stigma and disabilities imposed on petitioners by their convictions, the government's criminal investigation also had not unforeseeable consequences such as the freezing of needed assets by the campaign depository bank after it was contacted about the grand jury investigation by an FBI agent just five days before the 1984 election (*see* p. 9, ¶ 24 *supra*). While bank seizures of funds or falloffs in contributions or membership may be the result of private decisions, they are the direct, chilling consequence of the government's effort to impose the draconian solution of criminal sanctions. Thus, they are appropriately within the scrutiny of this Court. "The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power . . . that private action takes hold." *NAACP v. Alabama ex rel. Patterson,* 357 U.S. at 463.

In this matter, the government had alternatives available to it to prevent petitioners' perceived wrongful conduct which would not have impinged as severely on their legitimate First Amendment interests. With regard to the petitioners' fundraising activity, one alternative was action by the Federal Election Commission, which is authorized to seek civil penalties and injunctive relief for violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.*, the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001 *et seq.*, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031 *et seq.* In fact, the Federal Election Commission conducted a civil investigation of fundraising fraud parallel to that of the grand jury in this very matter. *See Spannaus v. Federal Election Commission,* 641 F.Supp. 1520 (S.D.N.Y. 1986), *aff'd mem.,* 816 F.2d 670 (2d Cir. 1987). With regard to

petitioner LaRouche's tax fraud conspiracy charge, the government had available to it the full range of civil tax proceedings. These alternatives would have provided effective substitutes for criminal prosecution in their remedial effect, while imposing less of an infringement on petitioners' First Amendment rights.

The government's failure to utilize available approaches less intrusive upon petitioners' associative and expressive rights than criminal prosecution fails to meet this Court's rigorous standard of review for government actions adversely affecting First Amendment interests. Petitioners' confinement is not justified under this rigorous standard when it is recognized that:

> there can be a constitutional distinction between the infliction of criminal punishment, on the one hand, and the imposition of milder administrative or disciplinary sanctions, on the other, even though the same First Amendment interest is implicated by each.

Healy v. James, 408 U.S. at 203 (Rehnquist, J., concurring in result).

III. THE CONFINEMENT OF PETITIONERS VIOLATES UNITED STATES TREATY LAW AND THE LAW OF NATIONS PROTECTING THE FREE EXERCISE OF POLITICAL EXPRESSION.

This Court has recognized that the United States "has a vital national interest in complying with international law." *Boos v. Barry*, 485 U.S. ___, ___, 99 L.Ed.2d 333, 346 (1988). In addition to the infringement of First Amendment rights suffered by petitioners here, their confinement also violates rights provided to them under international law provisions which this Court should recognize as an independent basis for habeas corpus relief.

A. Petitioners' Detention Violates Rights Guaranteed Under United States Treaty Law.

Treaties made by the United States are the law of the land. U.S. Const., art. VI, cl. 2. The United Nations Charter ("U.N. Charter"), Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969), having been ratified by the United States Senate pursuant to Article II, Section 2, Clause 2, of the Constitution, is law of the United States binding on the United States government. The fundamental human rights to express political opinions freely and to associate with others without fear of

improper governmental interference are guaranteed by Articles 1(3), 55(c) and 56 of the United Nations Charter, as further defined and clarified in Articles 19 and 20 of the Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (App. at A-150-52).

Under the principles first enunciated by this Court in *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 313-14 (1829), the enforceability of the rights conferred by Articles 1(3), 55(c) and 56 of the U.N. Charter in United States courts turns upon whether or not the treaty provisions are self-executing. *See Diggs v. Richardson*, 555 F.2d 848, 851 (D.C. Cir. 1976). Petitioners submit that the provisions in question are self-executing.

The lower courts that have thus far addressed the issue have found the U.N. Charter to be non-self-executing and, consequently, not vesting in citizens of this country enforceable rights. In the leading case of *Sei Fujii v. California*, 97 A.C.A. 154, 217 P.2d 481 (1950), *aff'd*, 38 Cal.2d 718, 242 P.2d 617 (1952), an intermediate appellate court in California struck down a provision of the state's Alien Land Law, on the ground that the racially motivated statute was contrary to the nondiscrimination provisions in Article 55(c) of the U.N. Charter. The California Supreme Court, while affirming the intermediate court's judgment, did so exclusively on the ground that the statute violated the equal protection clause of the Fourteenth Amendment. It specifically rejected the lower court's reliance on the U.N. Charter. 38 Cal.2d at 722-25, 242 P.2d at 621-22. The *Fujii* decision was not appealed to this Court. Petitioners submit that *Fujii* was wrongly decided and the reasoning upon which it was based is obsolete.

An expansive reading of the Charter's human rights clauses, analogous to this Court's application of the "self-executing" due process or equal protection clauses of the Fourteenth Amendment, finds support in the principle enunciated by this Court in *Asakura v. Seattle*, 265 U.S. 332, 342 (1924), that "[t]reaties are to be construed in a broad and liberal spirit and when two constructions are possible, one restrictive of rights which may be claimed under it, and the other favorable to them, the latter is preferred." *Accord, Factor v. Laubenheimer*, 290 U.S. 276, 293-94 (1933); *see also Kolovrat v. Oregon*, 336 U.S. 187, 193 (1961).

Any vagueness which may have characterized Articles 55 and 56 as enacted "has been eliminated in large measure through subsequent adoption by the United Nations of various international human rights instruments that give juridical content to [these articles]." Sarosdy, *Jurisdiction Following Illegal Extraterritorial Seizure: International Human Rights Obligations as an Alternative to Constitutional Stalemate,* 54 Tex. L. Rev. 1464 (1976). Specifically, the Universal Declaration of Human Rights, now widely regarded as containing a universally recognized catalog of the human rights that members of the United Nations deem fundamental, provides an authoritative interpretation of the Charter. *See* Comment, *Self-Executing Treaties and the Human Rights Provisions of the United Nations Charter: A Separation of Powers Problem,* 25 Buffalo L. Rev. 773, 783-84 (1976). Additional definition of the U.N. Charter guarantees is provided by the International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (*entered into force* March 23, 1976) (App. at A-152-53).

The universal acceptance of the freedom of expression and opinion norm contained in Article 55(c), *see* argument III.B., *infra,* is evidence of a consensus supporting a rule of law prohibiting infringement of that freedom, even if other human rights with less universal support cannot be protected solely on the basis of the Charter. *See* I. Brownlie, *Principles of Public International Law* 596-98 (3d ed. 1979).

Whatever human rights norms are generated by the U.N. Charter must be given effect domestically by member states, including the United States, if those states are to fulfill their legal obligations under the treaty. *See Oyama v. California,* 332 U.S. 633, 649-50 (Black, J., and Douglas J., concurring), 673 (Murphy, J., and Rutledge, J., concurring) (1948). President Carter affirmed this position in his March 1977 address to the United Nations, declaring that "[t]he solemn commitments of the United Nations Charter, of the United Nations Universal Declaration for Human Rights, of the Helsinki Accords, and of many other international instruments must be taken just as seriously as commercial or security agreements." [1977] Pub. Papers of the Pres. 449-50. *See also Address by Assistant Secretary of State for Human Rights and Humanitarian Law*

(March 16, 1978) ("The position of the United States is that the provisions of Articles 1, 55 and 56 of the United Nations Charter embody mutual recognition by all parties that every person without distinction is entitled under the Charter to respect for his or her human rights and fundamental freedoms"); *Proclamation No. 4885,* 3 C.F.R. 70 (1982) (President Reagan stating: "We will continue to strive to respect these rights [*i.e.*, the Bill of Rights and the Universal Declaration of Human Rights] fully in our own country and to promote their observance abroad. We could have no greater wish for mankind than that all people come to enjoy these rights"); *Proclamation No. 5357 of July 19, 1985,* 3 C.F.R. 70 (1986) (President Reagan stating: "Our Nation will continue to speak out for the freedom of those denied the benefits of liberty. We will continue to call for the speedy release of those who are unjustly persecuted and falsely imprisoned. . . . [T]he United States of America will demand that the signatories of the United Nations Charter and the Helsinki Accords live up to their obligations and respect the principles and spirit of those international agreements and understandings").[12]

Finally, in *People of Saipan ex rel. Guerrero v. United States Department of Interior,* 502 F.2d 90 (9th Cir. 1974), *cert. denied,* 420 U.S. 1003 (1975), the United States Court of Appeals for the Ninth Circuit set forth the following test for determining whether a treaty is self-executing:

> [t]he extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors: the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct implementation, the availability and feasibility of alternative enforcement methods, and the immediate and long-range social consequences of self- or non-self-execution.

Id. at 97.

---

12. This Court has stated that "[a] construction of a treaty by the political department of the government, while not conclusive upon a court called upon to construe such a treaty in a matter involving personal rights, is nevertheless of much weight." *Charlton v. Kelly,* 229 U.S. 447, 468 (1913). *Accord, Factor v. Laubenheimer,* 290 U.S. at 295.

Saipan suggests that to the extent the United States has acquiesced in certain provisions of international treaties which provide rights coincident with customary international law and with the United States Constitution, such provisions are enforceable domestically. Under the *Saipan* test, Articles 55 and 56 should be found by this Court to be self-executing.

B. Petitioners Are Being Detained In Violation Of The "Law Of Nations."

Petitioners' right to the free exercise of political expression without improper governmental interference and imprisonment is also protected by customary international law or the "law of nations," a part of the law of the United States, which the Court is bound to ascertain and administer. *The Paquete Habana,* 175 U.S. 677, 700 (1900); *The Nereide,* 13 U.S. (9 Cranch) 388, 422-23 (1815). What the law of nations on a subject is "may be ascertained by consulting the works of jurists, writing professedly on public laws; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law." *United States v. Smith,* 18 U.S. (5 Wheat.) 153, 160-61 (1820).

Most nations in their constitutions now prohibit discrimination and/or persecution on the basis of political beliefs. *See* M. McDougal, H. Lasswell, Lung-Chu Chen, *Human Rights and World Public Order* 705-08 (1980) [hereinafter M. McDougal]. Further, as noted earlier, the right to free expression is enumerated in the U.N. Charter, a treaty ratified by the United States. It is also included in Articles 5 and 16 of the Organization of American States Charter, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 (*entered into force* Dec. 13, 1951) and *amended* by the Protocol of Buenos Aires, Feb. 27, 1967, T.I.A.S. No. 6847, O.A.S.T. No. 1-A, O.A.S.O.R., O.E.A./Ser. A/2, add. 2 (*entered into force* Feb. 27, 1970), another ratified treaty of the United States, as that treaty is elaborated upon by Articles 4 and 22 of the American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L/V/II 23, doc. 21, rev. 2.

In addition to these treaty provisions, the right to free political expression is also set forth in the following international human rights instruments: the Universal Declaration of Human

Rights,[13] at Articles 19, 28, 29 and 30; the International Covenant on Civil and Political Rights, at Article 19; the American Convention on Human Rights, Nov. 22, 1969, O.A.S. T.S. No. 36 at 2, O.A.S. Off. Rec. OEA/Ser. L/V/II 23 doc. 21, rev. 2 (*entered into force* July 18, 1978), at Article 13; the European Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 221, at Articles 10, 13 and 14; the African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Dec. CAB/LEG/67/3 rev. 5, at Articles 2 and 9; and the Final Act of the Conference on Security and Cooperation in Europe ("Helsinki Accords"),[14] Helsinki, August, 1975, *reprinted in* 73 U.S. State Dept. Bull. 323 (1975), at Principles 7 and 10. The repeated inclusion of provisions setting forth this right in the above-cited instruments demonstrates that it is universally recognized and accepted by states that freedom *of* political expression and freedom *from* governmental suppression is a customary principle of international law that no civilized nation may deny its citizens.[15] (The relevant portions of the instruments cited above are set forth in the Appendix at A-150-58.) This principle of customary international law is enforceable by petitioners in the courts of the United States against the United States government. *Filartiga v. Pena-Irala,*

---

13. The Universal Declaration is an authoritative interpretation of the human rights provisions of the United Nations Charter and its precepts have become recognized as established customary law, having the attributes of *jus cogens. See Filartiga v. Pena-Irala,* 630 F.2d 876, 883 (2d Cir. 1980); M. McDougal at 274.

14. *See Proclamation No. 5334 of April 30, 1985,* 3 C.F.R. 46 (1986) (President Reagan stating: "Human rights and fundamental freedoms lie at the heart of the commitments made in the Helsinki Accords of 1975 and in the Madrid Concluding Document of 1983. These documents set forth a clear code of conduct, not only for relations among sovereign states, but also for relations between states and their citizens. . . . Let us as Americans look once again to our commitment to implement fully the human rights and humanitarian provisions of the Helsinki Accords, because these freedoms are fundamental to our way of life."

15. At a minimum, the United States government has explicitly recognized that the principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights reflect customary law. *See* Memorial of the Government of the United States of America at 71, *Case Concerning United States Diplomatic and Consular Staff in Teheran (U.S. v. Iran,* 1980 I.C.J. 3), I.C.J. Pleadings 1 (1980); *see also Memorandum for the United States as Amicus Curiae* at 3, *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980).

630 F.2d at 884-85; *Fernandez v. Wilkinson*, 505 F.Supp. 787 (D. Kan. 1980), *aff'd on other grounds sub nom. Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981).

IV. PETITIONERS' FIFTH AMENDMENT RIGHT TO DUE PROCESS IS DENIED BY THEIR CONFINEMENT IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW GUARANTEEING THEIR RIGHT OF POLITICAL EXPRESSION FREE FROM UNDUE GOVERNMENTAL INTERFERENCE.

The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. By its substantive component, this constitutional provision bars certain government actions "regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). It thereby serves to prevent governmental power from being used for purposes of oppression. *Id.; Murray's Lessee v. Hoboken Land and Improvement Co.*, 59 U.S. (18 How.) 272, 277 (1856).

Due process of law is "a summarized constitutional guarantee of respect for those personal immunities which . . . are 'implicit in the concept of ordered liberty.' *Palko v. Connecticut*,[16] 302 U.S. 319, 325." *Rochin v. California*, 342 U.S. 165, 169 (1952). The protection has no fixed technical content. In *Rochin v. California*, this Court noted:

> In dealing not with the machinery of government but with human rights, the absence of formal exactitude, or want of fixity of meaning, is not an unusual or even regrettable attribute of constitutional provisions.

342 U.S. at 169.

The principles of customary international law can provide content to the notion of fairness inherent in the concept of due process. *See Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1388 (10th Cir. 1981). These principles, discussed *supra*, establish that human beings have a right of expression which should be free from undue governmental interference. The government's prosecution and confinement of petitioners, tainted as it was by an interest in suppressing their right to free expression,

---

16. In *Palko v. Connecticut*, 302 U.S. 319, 326-27 (1937), Justice Cardozo wrote for this Court that freedom of thought and speech "is the matrix, the indispensable condition, of nearly every other form of freedom."

see argument II.B., *supra*, violates this international norm and thereby constitutes a form of oppression. When this oppressive government conduct results in an infringement of liberty, as petitioners' imprisonment has, it violates the constitutional guarantee of due process of the Fifth Amendment. This constitutional violation mandates the granting of the requested writs of habeas corpus and the release of petitioners from custody.

WHEREFORE, your petitioners pray:

A) That, under 28 U.S.C. § 2243, this Court issue an order that the respondents show cause why this Joint Petition should not be granted and the petitioners discharged.

B) That this Court set out in the order a return day of three days.

C) That this Court set the matter down for hearing within five days after the return.

D) That this Court order respondents to release the petitioners forthwith pending the final determination of this Joint Petition or in the alternative that each petitioner be brought before the Court and allowed to sign his or her own recognizance to abide by such orders as this Court may enter and be released on that recognizance.

E) That this Court hear and determine the matter, and upon final hearing issue Writs of Habeas Corpus and an order directing the respondents to discharge the petitioners from their custody.

Respectfully submitted,

OF COUNSEL:

BASKIN FLAHERTY
ELLIOTT &
MANNINO, P.C.

CHARLES W. BOWSER
(Counsel of Record)
FRANK H. SHERMAN
SCOTT A. BURR
1800 Three Mellon Bank
Center
Philadelphia, PA 19102
(215) 977-7400
Attorneys for Petitioners

88-1990 (2)

Supreme Court, U.S.
FILED
JUN 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

IN RE

LYNDON H. LAROUCHE, JR.,
WILLIAM WERTZ,
EDWARD SPANNAUS,
MICHAEL BILLINGTON,
DENNIS SMALL,
PAUL GREENBERG and
JOYCE RUBINSTEIN,

Petitioners.

APPENDIX TO JOINT PETITION FOR WRITS OF HABEAS CORPUS

OF COUNSEL:

BASKIN FLAHERTY
ELLIOTT &
MANNINO, P.C.

CHARLES W. BOWSER
(Counsel of Record)
FRANK H. SHERMAN
SCOTT A. BURR
1800 Three Mellon Bank Center
Philadelphia, PA 19102
(215) 977-7400
Attorneys for Petitioners

PACKARD PRESS / LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

161 pp

APPENDIX

TABLE OF CONTENTS

Page

Appendix A: Verifications of the Petitioners (original signatures contained in the Lodging filed in support of Joint Petition) A-1

Appendix B: Excerpts from Sentencing Hearing on January 27, 1989 ..... A-4

Appendix C: Order of the United States Court of Appeals for the Fourth Circuit filed April 14, 1989 ..... A-9

Appendix D: Order of the United States Court of Appeals for the Fourth Circuit filed April 25, 1989 ..... A-10

Appendix E: Letter from Clerk of the Supreme Court of the United States dated May 11, 1989 .... A-11

Appendix F: Second Superseding Indictment in *United States v. LaRouche,* District of Massachusetts Criminal No. 86-323-K A-12

Appendix G: Indictment in *United States v. LaRouche,* Eastern District of Virginia Criminal No. 88-243-A A-39

Appendix H: Order of United States District Judge Albert V. Bryan, Jr., dated November 10, 1988 .. A-77

Appendix I: Second Amended Complaint in *LaRouche v. Webster,* Southern District of New York Civil Action No. 75 Civ. 6010 (MJL) A-84

Appendix J: Amended Answer in *LaRouche v. Webster,* Southern District of New York Civil Action No. 75 Civ. 6010 (MJL) A-115

TABLE OF CONTENTS – *(Continued)*

Page

Appendix K: Opinion in *LaRouche Campaign v. First National State Bancorporation,* District of New Jersey Civil Nos. 84-4685 and 84-4849, dated March 11, 1985 ..... A-128

Appendix L: *New York Times* Article published on October 29, 1986 ..... A-147

Appendix M: Constitutional Provisions and International Law Instruments Involved A-150

APPENDIX A

Verifications of the Petitioners
(original signatures contained in the
Lodging filed in support of Joint Petition)

VERIFICATION

I, LYNDON H. LaROUCHE, JR., state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 22, 1989.

/s/ Lyndon H. LaRouche, Jr.
LYNDON H. LaROUCHE, JR.

VERIFICATION

I, WILLIAM WERTZ, state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 22, 1989.

/s/ William Wertz
WILLIAM WERTZ

VERIFICATION

I, EDWARD SPANNAUS, state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 22, 1989.

/s/ Edward Spannaus
EDWARD SPANNAUS

VERIFICATION

I, MICHAEL BILLINGTON, state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 22, 1989.

/s/ Michael Billington
MICHAEL BILLINGTON

VERIFICATION

I, DENNIS SMALL, state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 22, 1989.

/s/ Dennis Small
DENNIS SMALL

VERIFICATION

I, PAUL GREENBERG, state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 22, 1989.

/s/ Paul Greenberg
PAUL GREENBERG

VERIFICATION

I, JOYCE RUBINSTEIN, state that I am one of the petitioners named in the foregoing Joint Petition, that I have read the foregoing Joint Petition and know the contents thereof, and I verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on May 23, 1989.

/s/ Joyce Rubinstein
JOYCE RUBINSTEIN

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	:	
-vs-	:	CRIMINAL ACTION
	:	NO. 88-243-A
LYNDON LaROUCHE, et al.,	:	
Defendants.	:	

Friday, January 27, 1988
Alexandria, Virginia

Transcript of sentencing proceedings in the above-captioned matter.

BEFORE:

The Honorable ALBERT V. BRYAN, JR., Judge
United States District Court

• • •

THE COURT: Will the defendant [LaRouche] come forward.

I am unwilling to accept in Mr. LaRouche's case or any of these others, that the end, lofty as it may be, justifies the means that were resorted to in this case. It's a serious case. It warrants incarceration for a substantial period of time.

On each count, it will be the sentence of the Court that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five years. Counts I through IV will run concurrently with each other. Counts V through IX will run concurrently with each other. And Counts X through XIII will run concurrently with each other. However, those sentences will run consecutively, that is for a total of 15 years.

I am unwilling to recommend a level one place of incarceration. The medical facilities within the Bureau of Prisons are more than adequate to take care of the defendant's medical problem. Nor am I willing to authorize self-surrender or a B-2 sentence. Moreover, I do not think that on the substantive question of guilt there is any real substantial question of law. The defendant is remanded to the custody of the United States Marshal. I am unwilling to grant bail pending appeal.

• • •

THE COURT: Will the defendant [Wertz] come forward.

On each count, that is I through XI, it will be the sentence of the Court that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five years, pay a fine of $1,000, and the $50 assessment. The five-year incarceration terms will be made to run concurrently with each other, so that -- however, the fines will be consecutive, that is there will be $11,000 in fines, and a total of five years incarceration, plus the $50 assessment.

I am unwilling to grant the defendant bond pending appeal. As in the case of Mr. LaRouche, I don't think the question of guilt in this case presents a substantial legal question. He is remanded to the custody of the United States Marshal.

• • •

THE COURT: The defendant [Spannaus] come forward.

While counsel in the case haven't borne down on it, the defendants have repeatedly and from some of the testimony, raised this idea that this is a politically inspired, politically-motivated prosecution. I reject that as errant nonsense. The idea that this organization is a sufficient threat to anything, that would warrant the Government bringing a prosecution to silence them is, just defies human experience.

With that said, this defendant's role in the organization is sufficiently high level to warrant incarceration.

It will be the sentence of the Court that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for five years and pay a fine of $1,000 and a special assessment on each of the ten counts. The sentence of incarceration will run concurrently with

each other, and the fines as in the case of the others will be noncommitted fines.

I reject his request for bond pending appeal. It may have been a close case factually, it wasn't so close that it ought not to have gone to the jury, and there was ample evidence in my view for the conviction, and I find no substantial questions of law or fact on the issue of guilt to warrant bond pending appeal.

He is remanded to the custody of the United States Marshal.

• • •

THE COURT: Would the defendant [Billington] come forward.

On each count, that is the four counts on which the defendant was found guilty, Count I, III, VIII and X, it will be the sentence of the Court that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of three years and pay a fine of $2,000 plus $50 assessment. The period of incarceration will be made to run concurrently so that the defendant has a total of three years imposed.

I am unwilling to grant voluntary surrender, a B-2 sentence or any recommendation for a level-one place of incarceration. I will deny bail pending appeal because I find that there is no substantial question of law or fact insofar as the guilt of this defendant is concerned.

He is remanded to the custody of the United States Marshal.

• • •

THE COURT: The defendant [Small] come forward.

The nicest thing that can be said about some of these solicitors is that they have deluded themselves into thinking that their lofty aims justified the means by which they raised money. And they still apparently feel that way.

It will be the sentence of the court on each of the four counts on which he was found guilty, I, III, VIII, and X, the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of

three years, and that he pay a fine of $2,000, plus the $50 assessment. The terms of imprisonment will be made to run concurrently.

I will not permit voluntary surrender. I will not impose the sentence under B-2. Nor am I willing to recommend a level one place of incarceration. I do not find that the issues raised on appeal raise substantial questions of law or fact which would result in either a new trial or a reversal. For these reasons, bond pending appeal is denied. Defendant is remanded to the custody of the United States Marshal.

MR. ROBINSON: Your Honor, pardon me, just a point of clarification. I may have missed it, but I didn't hear whether the Court stated that the fines would be consecutive or concurrent.

THE COURT: The fines—only the incarceration is concurrent. The fines of $2,000 each are on each count. That is a total of $8,000.

MR. ROBINSON: Thank you.

THE COURT: Defendant is remanded to the custody of the United States Marshal.

• • •

THE COURT: Will the defendant [Greenberg] come forward.

On the four counts on which the defendant was found guilty — three counts, I, IX, and XI, it will be the sentence of the Court that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of three years. That he pay a fine of $2,000, and a $50 assessment. The terms of imprisonment will run concurrently with each other. The fines will not. So there will be a total of $6,000 in fines. The fines will be uncommitted fines. The amount to serve is three years.

I am unwilling to allow voluntary surrender of a B-2 sentence, nor recommend that the place of incarceration be a level one place of incarceration. I do not find that the issues to be apparently raised on appeal raise substantial questions of law or fact which would likely result in a reversal or a new trial. For

those reasons bail pending appeal will be denied. Defendant is remanded to the custody of the United States Marshal.

• • •

THE COURT: Will the defendant [Rubinstein] come forward.

There is in my view no reason to treat this fund solicitor different from the others. While the amounts of money involved vary from solicitor to solicitor, the criminal conduct which gave rise to those solicitations is the same.

It will be the sentence of the Court that on the three counts on which the defendant was found guilty, Counts I, VI, and VII, she be committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of three years, pay a fine of $2,000, and a $50 assessment. The three fines will be concurrent. Each three-year sentence will be, that the three fines will be consecutive. The three three-year terms will be concurrent for a total of three years.

I am unwilling to allow voluntary surrender, or recommend a level one institution.

As in the other case, I do not find there is a substantial question of law or fact which would on appeal result in a new trial or reversal. For these reasons the defendant is remanded to the custody of the United States Marshal.

• • •

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 89-5518

FILED
APR. 14, 1989
U.S. Court of Appeals
Fourth Circuit

UNITED STATES OF AMERICA — *Plaintiff – Appellee*

versus

LYNDON H. LAROUCHE, JR.;
WILLIAM WERTZ;
EDWARD SPANNAUS;
MICHAEL BILLINGTON;
DENNIS SMALL;
PAUL GREENBERG;
JOYCE RUBINSTEIN — *Defendants – Appellants*

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria.

Upon consideration of appellants' motion for bond pending appeal and the appellee's response,

IT IS ORDERED that the motion for bond filed pursuant to Rule 9(b) of the Federal Rules of Appellate Procedure is hereby denied.

Entered at the direction of Judge Hall with the concurrence of Judge Murnaghan and Judge Butzner.

For the Court,

JOHN M. GREACEN
CLERK

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 89-5518

FILED
APR. 25, 1989
U.S. Court of Appeals
Fourth Circuit

UNITED STATES OF AMERICA — *Plaintiff – Appellee*

versus

LYNDON H. LAROUCHE, JR.;
WILLIAM WERTZ;
EDWARD SPANNAUS;
MICHAEL BILLINGTON;
DENNIS SMALL;
PAUL GREENBERG;
JOYCE RUBINSTEIN — *Defendants – Appellants*

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria.

Upon consideration of appellants' motion for reconsideration of order denying motion for bond pending appeal.

IT IS ORDERED that the motion is denied.

Entered at the direction of Judge Hall with the concurrence of Judge Murnaghan and Judge Butzner.

For the Court,

JOHN M. GREACEN
CLERK

APPENDIX E

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

JOSEPH F. SPANIOL, JR.
CLERK OF THE COURT

May 11, 1989

Mr. R. Kenly Webster
Shaw, Pittman, et al.
2300 N Street, NW
Washington, DC 20037

Re: Lyndon H. LaRouche, Jr.,
v. United States
Application No. A-884

Dear Mr. Webster:

The application for release pending appeal before the United States Court of Appeals for the Fourth Circuit in the above-entitled case has been presented to the Chief Justice who on May 11, 1989, endorsed thereon the following:

"5/11/89
Denied
WHR"

Very truly yours,

JOSEPH F. SPANIOL, JR.,
Clerk

By_____
Francis J. Lorson
Chief Deputy Clerk

NOTE – FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
v.	)	CRIMINAL NO.:
LYNDON H. LAROUCHE,	)	86-323-K
THE LAROUCHE CAMPAIGN	)	
INDEPENDENT DEMOCRATS FOR LAROUCHE	)	VIOLATIONS:
MICHAEL GELBER	)	18 U.S.C. §1343 –
RICHARD SANDERS	)	Fraud by Wire
CHARLES PARK	)	(Counts 1-116); 18
MICHAEL BILLINGTON	)	U.S.C. §1341 –
PAUL GOLDSTEIN	)	Mail Fraud (Counts
JEFFREY STEINBERG	)	117-123); 18 U.S.C.
MICHELLE STEINBERG	)	§1503 and 371 –
EDWARD SPANNAUS	)	Conspiracy to Ob-
ROBERT GREENBERG	)	struct Justice
ROY FRANKHAUSER	)	(Count 124); 18
a/k/a "BILL CLAY"	)	U.S.C. §402 –
ELLIOT GREENSPAN	)	Criminal Contempt
RICHARD BLACK	)	(Count 125); 18
JOHN SCIALDONE	)	U.S.C. §2 – Aid-
CAMPAIGNER PUBLICATIONS, INC.	)	ing and Abetting
CAUCUS DISTRIBUTORS, INC.	)	(Counts 1-123)
NATIONAL CAUCUS OF LABOR COMMITTEES	)	

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that:

Introduction

1. Defendant LYNDON H. LAROUCHE is a resident of Leesburg, Virginia and presides over defendant NATIONAL CAUCUS OF LABOR COMMITTEES and over its Security and Intelligence staff.

2. Defendant THE LAROUCHE CAMPAIGN ("TLC") was the principal authorized campaign committee for the 1984 presidential primary election campaign of defendant LYNDON H. LAROUCHE who held himself out in 1984 as a candidate for the Democratic Party's nomination for president of the United States. TLC is an unincorporated association organized under the Federal Election Campaign Act (2 U.S.C. 431, *et seq.*).

3. Defendant INDEPENDENT DEMOCRATS FOR LAROUCHE ("IDL") was formed in June, 1984 as successor to TLC after defendant LYNDON H. LAROUCHE had failed to obtain the Democratic Party's nomination for president. IDL was the principal authorized campaign committee during the period from June to November, 1984 when defendant LYNDON H. LAROUCHE held himself out as a candidate for president of the United States in the 1984 general presidential election. IDL is an unincorporated association organized under the Federal Election Campaign Act (2 U.S.C. 431, *et seq.*).

4. Defendant MICHAEL GELBER was, from sometime in 1981 until approximately November, 1984, a resident of Boston, Massachusetts and was a telephone fundraiser for defendant LYNDON H. LAROUCHE, TLC, IDL and other entities associated with defendant LYNDON H. LAROUCHE.

5. Defendant RICHARD SANDERS was, from sometime in 1981 until approximately November, 1984, a resident of Boston, Massachusetts and was a telephone fundraiser for defendant LYNDON H. LAROUCHE, TLC, IDL and other entities associated with defendant LYNDON H. LAROUCHE.

6. Defendant CHARLES PARK was, from sometime in 1983 until approximately November, 1984, a resident of Boston, Massachusetts and was a telephone fundraiser for defendant LYNDON H. LAROUCHE, TLC, IDL and other entities associated with defendant LYNDON H. LAROUCHE.

7. Defendant MICHAEL BILLINGTON was, from sometime in early 1984 until approximately November, 1984, a resident of Boston, Massachusetts and was a telephone fundraiser for defendant LYNDON H. LAROUCHE, TLC, IDL and other entities associated with defendant LYNDON H. LAROUCHE.

8. Defendant RICHARD BLACK has resided in the Boston, Massachusetts area since approximately November, 1984; he is a follower and supporter of defendant LYNDON H. LAROUCHE who, with others, came to the Boston area in approximately November, 1984 to replace defendants MICHAEL GELBER, RICHARD SANDERS, CHARLES PARK and MICHAEL BILLINGTON.

9. Defendant ELLIOT GREENSPAN is a resident of Ridgefield Park, New Jersey; he is a supporter and follower of defendant LYNDON H. LAROUCHE who came to Boston, Massachussets at various times in 1985 and 1986 to appear before a United States Grand Jury sitting in Boston, Massachusetts.

10. Defendant PAUL GOLDSTEIN is a resident of Leesburg, Virginia where he serves, full-time, as a member of the "Security and Intelligence" staff of defendant LYNDON H. LAROUCHE.

11. Defendant JEFFREY STEINBERG is a resident of Leesburg, Virginia where he serves, full-time, as a member of the "Security and Intelligence" staff of defendant LYNDON H. LAROUCHE.

12. Defendant MICHELLE STEINBERG is a resident of Leesburg, Virginia where she serves, full-time, as a member of the "Security and Intelligence" staff of defendant LYNDON H. LAROUCHE.

13. Defendant ROBERT GREENBERG is a resident of Leesburg, Virginia where he serves, full-time, as a member of the Security and Intelligence Staff of defendant LYNDON H. LAROUCHE.

14. Defendant EDWARD SPANNAUS is a resident of Leesburg, Virginia where he serves as Treasurer of TLC and where he sits on the National Executive Committee (the body described in paragraph 20).

15. Defendant ROY FRANKHAUSER a/k/a "Bill Clay" is a resident of Reading, Pennsylvania, where he has been employed, at all times referred to herein, as a "Security Consultant" to defendant LYNDON H. LAROUCHE, reporting on

"security" matters to defendants PAUL GOLDSTEIN, JEFFREY STEINBERG and MICHELLE STEINBERG and others.

16. Defendant JOHN SCIALDONE has resided in Boston, Massachusetts, since at least January, 1984; he is a follower and supporter of defendant LYNDON H. LAROUCHE.

17. Defendant CAMPAIGNER PUBLICATIONS, INC. ("CAMPAIGNER") is a New York corporation which raises money and distributes literature for and on behalf of defendant LYNDON H. LAROUCHE and his various presidential campaigns. Defendant CAMPAIGNER was headquartered in New York, New York, until approximately December, 1984 when it moved its headquarters to Leesburg, Virginia, after defendant LYNDON H. LAROUCHE moved his home from New York, New York to Leesburg, Virginia. Until approximately November, 1984, defendants MICHAEL GELBER, RICHARD SANDERS, CHARLES PARK and MICHAEL BILLINGTON were, along with their other employment described herein, sales representatives of defendant CAMPAIGNER in the Boston, Massachusetts area.

18. Defendant CAUCUS DISTRIBUTORS, INC. ("CAUCUS") is a New York corporation which acts as a fundraising entity for defendant LYNDON H. LAROUCHE and his various presidential campaigns, employing full-time fundraisers for that purpose and paying their salaries, and their expenses incurred for meals, lodging and incidentals. Defendant CAUCUS was headquartered in New York, New York, until approximately December, 1984, when it moved its headquarters to Leesburg, Virginia, after defendant LYNDON H. LAROUCHE moved from New York, New York to Leesburg, Virginia. Until approximately November, 1984, defendant MICHAEL GELBER was the Branch Manager of defendant CAUCUS' Boston, Massachusetts area office and defendants RICHARD SANDERS, CHARLES PARK and MICHAEL BILLINGTON were employees of defendant CAUCUS' Boston, Massachusetts area office.

19. FUSION ENERGY FOUNDATION ("FUSION") is a New York corporation which was formed at the direction of defendant LYNDON H. LAROUCHE in order to raise money

by selling a periodic magazine entitled *Fusion* magazine. FUSION had its headquarters in New York, New York, until approximately December, 1984, when it moved its headquarters to Leesburg, Virginia, after defendant LYNDON H. LAROUCHE moved from New York, New York to Leesburg, Virginia. Until approximately November, 1984, defendants MICHAEL GELBER, RICHARD SANDERS, CHARLES PARK and MICHAEL BILLINGTON, acting on behalf of FUSION, sold subscriptions to *Fusion* Magazine in public places in Massachusetts, such as various airline terminals at Logan International Airport, various shopping centers and at approaches to various United States Post Office buildings.

20. Defendant NATIONAL CAUCUS OF LABOR COMMITTEES ("NCLC") is an association of individuals who support defendant LYNDON H. LAROUCHE and his various presidential campaigns. Defendant LYNDON H. LAROUCHE presides over defendant NCLC and over its governing body, the "National Executive Committee", which in turn issues instructions to the various "National Committee" members in charge of defendant NCLC's activities in various regions of the United States. The regions include the "New York Region", a region governing all of defendant NCLC's activities in cities in the Northeast where NCLC members were active, including New York City, various cities in New Jersey, and Boston, Massachusetts. Members of defendant NCLC are employed by and operate all the entities related to defendant LYNDON H. LAROUCHE, including defendants TLC, IDL, CAMPAIGNER, CAUCUS, and FUSION. Each of the individual defendants named herein (at paragraphs 1, and 4-16 of this indictment) has, at all times referred to in this indictment, been a member of defendant NCLC except for defendant ROY FRANKHAUSER, a/k/a "Bill Clay" who has been, at all times referred to in this indictment, a security consultant paid by members of defendant NCLC.

Counts 1 through 116 (18 U.S.C. §§1343 and 2 – Fraud by Wire)

The Scheme to Defraud

21. Paragraphs 1 through 20 are hereby incorporated by reference.

22. Commencing at least as early as in or around January 1984, defendants herein

THE LAROUCHE CAMPAIGN
INDEPENDENT DEMOCRATS FOR LAROUCHE
MICHAEL GELBER
RICHARD SANDERS
CHARLES PARK
MICHAEL BILLINGTON
CAMPAIGNER PUBLICATIONS, INC.
CAUCUS DISTRIBUTORS, INC.

and others both known and unknown to the grand jury devised and executed, and attempted to devise and execute, a scheme and artifice to defraud and to obtain money and property by false and fraudulent pretenses, representations and promises as more particularly described below.

The Establishment of Merchant Accounts

23. It was a part of this scheme that, during 1984, defendants TLC, IDL, and CAMPAIGNER opened Merchant Accounts at various banks. Defendants TLC and IDL opened Merchant Accounts at First Fidelity Bank, N.A. in Newark, New Jersey, and defendant CAMPAIGNER opened a Merchant Account at Chemical Bank, N.A., in New York, New York.

24. These Merchant Accounts, once opened by defendants TLC, IDL, and CAMPAIGNER at the banks involved, allowed these defendants to deposit at those banks and in those accounts, completed and authorized credit card charge slips reflecting payments to defendants TLC, IDL or CAMPAIGNER which had been made by credit card charge. Once the credit card slips were deposited, defendants could withdraw and use the monies reflected on the deposited credit card slips. The credit card slips were required to have an "authorization number" such as described in paragraph 25 next below.

25. An authorization number is a number obtained by the preparer of the credit card slip by placing a telephone call to the credit card company involved (or to its agent), and stating to that company the amount of the charge sought to be authorized, the name of the cardholder, and the date of expiration of the credit card account. After that information is given by the caller who is preparing the credit card slip to the credit card company involved, that information is fed by the credit card company into a computer while the caller waits and, if the computer indicates that the credit card account is valid and that there is sufficient unused credit remaining in the credit card account to pay for the charge, the credit card company approves of the charge and, as a way of locating its approval on a later date, the credit card company provides the caller with an authorization number which it simultaneously encodes into its computer base so that, at any later date it can, by using that authorization number, retrieve the amount of the charge involved, its date, the credit card account number involved, and the fact that the charge involved has been approved.

26. Once the caller preparing the credit card slip had obtained the authorization number indicating that the credit card charge involved was approved by the credit card company involved, the authorization number was placed on the credit card slip in the appropriate space and the credit card slip was then deposited with the bank. The bank thereafter could call the credit card company involved and, by using the authorization number, verify whether the dollar amount appearing on the credit card charge slip was approved by the credit card company.

27. Once defendants TLC, IDL and CAMPAIGNER had established the Merchant Accounts described above they, and others acting on their behalf, were able to deposit credit card charge slips with those banks which required that authorization numbers appear on the slips before deposit.

The obtaining of Credit Card Account Numbers From the Public

28. It was further a part of this scheme to defraud that defendants MICHAEL GELBER, RICHARD SANDERS, CHARLES PARK and MICHAEL BILLINGTON, as employees of both defendants CAUCUS and CAMPAIGNER, and acting within the course and scope of their employment with defendants CAUCUS and CAMPAIGNER, and as part of the course and scope of their activities on behalf of FUSION obtained from members of the general public and thereafter recorded for future use numerous Visa and Mastercard credit card account numbers.

29. The credit card account numbers were obtained by the defendants by various means, including the following:

(a) inducing members of the general public (approached at airports, shopping centers and post offices) to purchase a subscription (paid for by credit card charge) to LaRouche controlled publications such as *Fusion Magazine, New Solidarity,* and *Executive Intelligence Review;*

(b) inducing members of the general public to make a contribution (paid for by credit card charge) towards the "war on drugs", the advancement of "Fusion Energy", the "Strategic Defense Initiative" or some other issue or cause;

(c) inducing members of the general public to make a loan or a donation (paid for by credit card charge) to defendants TLC or IDL;

30. After the credit card account numbers were obtained by the defendants in the manner described in paragraph 29 hereof, the credit card account numbers were recorded by the defendants and others on index cards containing the name, address and telephone number of any potential contributor; certain of these index cards also contained the person's credit card account number and notations as to any special interest, public issue or cause supported by the person involved, which special interest, public issue or cause could be referred to and emphasized whenever the person involved was contacted and asked to contribute money to any of the defendants.

31. These index cards were referred to as "Contact Cards" by defendants and were maintained in the offices of defendant CAUCUS in Dorchester, Massachusetts where they were used by defendants in furtherance of the scheme to defraud described herein. Contact Cards were similarly prepared, maintained and used by defendant CAUCUS in other cities throughout the United States including New York, New York, Baltimore, Maryland, Philadelphia, Pennsylvania, Chicago, Illinois, Houston, Texas, and Los Angeles, California and in Leesburg, Virginia.

The Solicitation of Money by False Promise

32. It was further a part of the scheme to defraud that defendants, commencing at least as early as January, 1984, made repeated telephone calls to individuals for the purpose of attempting to obtain contributions or "loans" to TLC, IDL and CAMPAIGNER by the following false and fraudulent means:

(a) using the contact cards maintained by defendant CAUCUS as described above, defendants obtained names of individuals, along with their telephone numbers and credit card account numbers;

(b) telephoning the individuals whose names appeared on the contact cards, often telephoning the same individual as many as thirty times or more, often calling many times on the same day and often calling late at night; and during these repeated telephone calls, first requesting and then demanding in increasingly insistent tones, that donations of "loans" be made to defendants TLC, IDL or CAMPAIGNER;

(c) falsely promising that if money were loaned it would promptly be paid back in the manner promised, when defendants well knew that the policy of all defendants herein was not to repay in the manner promised loans thus obtained;

(d) falsely promising that if a donation or loan were made, the proceeds would be used to further some special interest

or cause supported by the individual being telephoned (such as the construction of a particular building, research into a cure for acquired immune deficiency syndrome, the fight against drugs, the advancement of fusion energy or the strategic defense initiative) when defendants well knew that the money thus obtained would not be used for any of those purposes, and

(e) threatening that if a donation or loan was not voluntarily made, defendants would, since they had access to the credit card account numbers, make unauthorized charges to those credit card accounts.

33. After receiving many phone calls such as those described above, some of the many individuals telephoned refused to make any loan or donation and some agreed to make a loan or donation in a specified amount.

The Unauthorized Credit Card Charges

34. It was a further part of this scheme to defraud that commencing at least as early as January, 1984, defendants obtained money by making unauthorized credit card charges on credit card account numbers of individuals who had not consented to the making of any charge and by making unauthorized additional charges on credit card accounts of those individuals who had only authorized a loan or a donation of a specified amount.

35. The unauthorized credit charges referred to above were made by the following false and fraudulent means:

(a) defendants obtained the name of the individual and his or her credit card number and its expiration date from the contact cards maintained by defendant CAUCUS;

(b) defendants telephoned the credit card authorization service center;

(c) defendants falsely told the credit card service center involved that they had obtained permission from the cardholder involved to charge a certain amount on his or her credit card account;

(d) defendants obtained from the credit card service center an approval for the unauthorized charge and a resulting authorization number;

(e) defendants prepared a credit card charge slip for each of the unauthorized charges involved by writing on that slip, among other things, the amount of the unauthorized charge, the date, the name of the cardholder, the organization to which the unauthorized charge was being paid, and the authorization number obtained from the credit card service center; and

(f) defendants caused the completed credit card charge slips to be deposited into the Merchant Accounts of either defendant TLC, IDL or CAMPAIGNER.

36. During the period from January, 1984 to November, 1984, and afterwards, the defendants, as part of a nationwide scheme operated from the local offices of defendants CAMPAIGNER, CAUCUS, and NCLC in Boston, Massachusetts, New York, New York, Baltimore, Maryland, Philadelphia, Pennsylvania, Chicago, Illinois, Houston, Texas and Los Angeles, California, among other cities, fraudulently made unauthorized credit charges in the manner referred to above.

37. This nationwide scheme included the making of at least one hundred and fifteen separate unauthorized credit card charges on the credit card accounts of at least fifteen separate unauthorized credit card charges on the credit card accounts of at least fifty-seven separate individuals residing in the New England area.

38. On or about the dates listed below, the defendants whose names appear on the line corresponding to each of the dates listed below, having knowingly and willfully devised the scheme and artifice to defraud and to obtain money by means of the false and fraudulent pretenses, representations and promises

as described in paragraphs 22 through 37 of this Indictment, for the purpose of executing the scheme and artifice to defraud and for attempting to do so, did transmit and cause to be transmitted by means of wire and radio comunication in interstate commerce certain sounds, signs and signals, to wit: an interstate telephone call made and caused to be made from Boston, Massachusetts to the National Data Corporation in Atlanta, Georgia on each of the dates listed below in order to make credit card charges in the following amounts from the accounts of the following cardholders:

Count	Defendants Involved in Causing Interstate Call	Date of Call	Cardholder and Amount
1	Gelber; Caucus; TLC	6/5/84	Robert Staton – $250
2	Gelber; Caucus; TLC	6/6/84	Robert Staton – $650
3	Gelbr; Caucus; TLC	7/17/84	Merrill Worthen – $1000
4	Gelber; Caucus; TLC	7/18/84	Harry Call – $100
5	Gelber; Caucus; TLC	7/25/84	Harry Call – $250
6	Gelber; Caucus; TLC	8/2/84	Harry Call – $150
7	Gelber; Caucus; IDL	8/8/84	Harry Call – $500
8	Gelber; Caucus; IDL	9/18/84	Warren Garlick – $100
9	Gelber; Caucus; IDL	10/16/84	Robert Norton – $950
10	Gelber; Caucus; IDL	8/2084	George Gordon – $100
11	Gelber; Caucus; IDL	8/20/84	George Gordon – $100
12	Gelber; Caucus; IDL	8/28/84	Frank Betak – $1000
13	Gelber; Caucus; IDL	9/11/84	Pasquali Carisella – $1000
14	Gelber; Caucus; IDL	9/18/84	Warren Garlick – $150
15	Gelber; Caucus; IDL	9/20/84	John Banner – $150
16	Gelber; Caucus; IDL	9/29/84	Steven Cappello – $1000
17	Gelber; Caucus; IDL	10/2/84	Kevin Lavelle – $1000
18	Gelber; Caucus; IDL	10/3/84	Edward McCallum – $900
19	Gelber; Caucus; IDL	10/14/84	Roger Poulin – $500
20	Gelber; Caucus; IDL	10/14/84	Elton Rich – $1000
21	Gelber; Caucus; IDL	10/14/84	Elton Rich – $1000
22	Gelber; Caucus; IDL	10/24/84	Rudolph Hoene – $900
23	Gelber; Caucus;	8/8/84	Harry Call – $500
24	Gelber; Caucus; Campaigner	8/24/84	Charles Coles – $1000
25	Gelber; Caucus; Campaigner	10/27/84	Charles Conlin – $2000
26	Gelber; Caucus; TLC	7/20/84	Stanley Spencer – $1000
27	Gelber; Caucus; IDL	8/21/84	Charles Coles – $1000
28	Gelber; Caucus; IDL	9/8/84	Louis Berretta – $1000

Count	Defendants Involved in Causing Interstate Call	Date of Call	Cardholder and Amount
29	Gelber; Caucus; IDL	9/11/84	Frank Murray – $1000
30	Gelber; Caucus; IDL	9/20/84	Paul Grobey – $1000
31	Gelber; Caucus; IDL	9/20/84	John Abrahamsen – $1000
32	Sanders; Caucus; TLC	7/9/84	John Hovnanian – $200
33	Sanders; Caucus; TLC	7/13/84	Nathan Slawsby – $500
34	Sanders; Caucus; TLC	7/16/84	Bernard Dekant – $100
35	Sanders; Caucus; TLC	7/16/84	Bernard Dekant – $75
36	Sanders; Caucus; TLC	7/16/84	Cecile Reil – $45
37	Sanders; Caucus; TLC	7/16/84	Cecile Reil – $45
38	Sanders; Caucus; TLC	7/17/84	Charles Conlin – $250
39	Sanders; Caucus; TLC	7/17/84	Charles Conlin – $250
40	Sanders; Caucus; TLC	7/17/84	Bernard Dekant – $100
41	Sanders; Caucus; TLC	7/17/84	Bernard Dekant – $75
42	Sanders; Caucus; TLC	7/17/84	Bart Jones – $250
43	Sanders; Caucus; TLC	7/17/84	Cecile Reil – $45
44	Sanders; Caucus; TLC	7/17/84	Cecile Reil – $45
45	Sanders; Caucus; TLC	7/18/84	Ursula Hoene – $600
46	Sanders; Caucus; TLC	7/19/84	Isle Salen – $325
47	Sanders; Caucus; TLC	7/19/84	Isle Salen – $325
48	Sanders; Caucus; TLC	7/21/84	Bernard Dekant – $50
49	Sanders; Caucus; TLC	8/2/84	Bernard Dekant – $50
50	Sanders; Caucus; TLC	8/3/84	John Hovnanian – $200
51	Sanders; Caucus; TLC	8/23/84	Lavilla Delaney – $500
52	Sanders; Caucus; TLC	9/7/84	Margaret Brady – $900
53	Sanders; Caucus; TLC	9/12/84	Lavilla Delaney – $500
54	Sanders; Caucus; TLC	9/17/84	Cecile Reil – $685
55	Sanders; Caucus; IDL	9/19/84	Robert Schadwald – $880
56	Sanders; Caucus; TLC	10/5/84	Paul Corkery – $500
57	Sanders; Caucus; TLC	10/6/84	Paul Corkery – $500
58	Sanders; Caucus; TLC	10/6/84	Sharon McCullough – $640
59	Sanders; Caucus; IDL	8/14/84	Sharon McCullough – $45
60	Sanders; Caucus; IDL	8/21/84	George Szabo – $500
61	Sanders; Caucus; IDL	8/23/84	Joanne Feeley – $250
62	Sanders; Caucus; IDL	8/24/84	George Szabo – $150
63	Sanders; Caucus; IDL	9/1/84	Cecile Reil – $45
64	Sanders; Caucus; IDL	9/1/84	Cecile Reil – $45
65	Sanders; Caucus; IDL	9/2/84	Cecile Reil – $45
66	Sanders; Caucus; IDL	9/2/84	Joanne Feeley – $70
67	Sanders; Caucus; IDL	9/10/84	Raymond Chatigny – $750
68	Sanders; Caucus; IDL	9/10/84	Raymond Chatigny – $100
69	Sanders; Caucus; IDL	9/18/84	Charles Conlin – $900
70	Sanders; Caucus; IDL	9/18/84	Charles Conlin – $900

Count	Defendants Involved in Causing Interstate Call	Date of Call	Cardholder and Amount
71	Sanders; Caucus; IDL	9/20/84	John Kinnecom – $500
72	Sanders; Caucus; IDL	9/20/84	Isle Salen – $500
73	Sanders; Caucus; IDL	9/20/84	Isle Salen – $500
74	Sanders; Caucus; IDL	9/21/84	George Szabo – $350
75	Sanders; Caucus; IDL	10/2/84	Lee Vormelker – $975
76	Sanders; Caucus; IDL	10/16/84	Curtis Cetrulo – $1000
77	Sanders; Caucus; IDL	10/16/84	Curtis Cetrulo – $750
78	Sanders; Caucus; Campaigner	10/27/84	Charles Conlin – $2500
79	Sanders; Caucus; TLC	7/16/84	Charles Conlin – $900
80	Sanders; Caucus; TLC	7/17/84	Frank Skinner – $500
81	Sanders; Caucus; TLC	7/17/84	Frank Skinner – $200
82	Sanders; Caucus; TLC	7/17/84	Frank Skinner – $100
83	Sanders; Caucus; IDL	9/11/84	Frank Skinner – $200
84	Sanders; Caucus; IDL	9/11/84	Frank Skinner – $300
85	Sanders; Caucus; IDL	9/11/84	Frank Skinner – $500
86	Sanders; Caucus; IDL	10/2/84	Philip Harper – $975
87	Sanders; Caucus; IDL	10/14/84	William Hayes – $1000
88	Park; Caucus; TLC	5/24/84	Stanley Spencer – $750
89	Park; Caucus; TLC	7/18/84	Cecile Reil – $45
90	Park; Caucus; TLC	7/27/84	Joanne Feeley – $100
91	Park; Caucus; TLC	8/3/84	Cecile Reil – $45
92	Park; Caucus; IDL	10/2/84	Anne Darcangelo – $250
93	Park; Caucus; TLC	10/10/84	Nathan Slawsby – $1000
94	Park; Caucus; IDL	10/14/84	James Rush – $500
95	Park; Caucus; IDL	8/7/84	Steven Williams – $250
96	Park; Caucus; IDL	9/10/84	Kendall Barber – $1000
97	Park; Caucus; IDL	9/19/84	Richard Farnham – $250
98	Park; Caucus; IDL	9/19/84	Richard Farnham – $500
99	Park; Caucus; IDL	9/19/84	M. Carlton Storms – $1000
100	Park; Caucus; IDL	10/1/84	Mike McGirl – $1000
101	Park; Caucus; IDL	10/3/84	David Smith – $950
102	Park; Caucus; IDL	10/22/84	John Brotherson – $1000
103	Park; Caucus; IDL	10/14/84	Robert Luther – $1000
104	Park; Caucus; IDL	10/14/84	Robert Luther – $1000
105	Park; Caucus; Campaigner	7/28/84	Joanne Feeley – $150
106	Billington; Caucus; TLC	1/28/84	Joseph Childs – $100
107	Billington; Caucus; TLC	3/9/84	Edward Barber – $100
108	Billington; Caucus; TLC	3/22/84	Edward Barber – $100
109	Billington; Caucus; TLC	4/5/84	Edward Barber – $75
110	Billington; Caucus; TLC	4/17/84	Alfred Jackson – $200
111	Billington; Caucus; TLC	4/18/84	Stanley Spencer – $250
112	Billington; Caucus; TLC	5/23/84	Frank Betak – $950

Count	Defendants Involved in Causing Interstate Call	Date of Call	Cardholder and Amount
113	Gelber; Caucus; TLC	6/4/84	Gary Arnet – $500
114	Gelber; Caucus; TLC	6/4/84	Gary Arnet – $400
115	Billington; Caucus	2/24/84	Howland Jones – $1000
116	Gelber; Caucus; TLC	5/24/84	Charles Berringer – $1000

All in violation of Title 18, U.SC. §§1343 and 2.

Counts 117 through 123: (18 U.S.C. §§1341 and 2 – Mail Fraud)

39. Paragraphs 1 through 37 of this indictment are hereby realleged and reincorporated herein.

40. On or about the dates listed below, the defendants whose names appear on the line corresponding to each of the dates listed below, having knowingly and willfully devised the scheme and artifice to defraud and to obtain money by means of the false and fraudulent pretenses, representations and promises as described in paragraphs 22 though 37 of this Indictment, for the purpose of executing the scheme and artifice to defraud and for attempting to do so, did cause matters and things to be placed in post offices and authorized depositories for mail matter and did knowingly cause such matter and things to be delivered by the United States Postal Service according to the directories thereon, as set forth below:

Count	Defendants	Date	Mailing
117	Gelber; Campaigner	7/28/84	Letter to Charles Berringer in Marblehead, MA containing promissory note for $5000.
118	Gelber; IDL	8/7/84	Letter to Charles Berringer in Marblehead, MA containing promissory note for $1000.
119	Gelber; IDL	8/29/84	Letter to Charles Berringer in Marblehead, MA containing promissory note for $1000.
120	Gelber; Campaigner	10/1/84	Letter from Boston, MA to Arthur Hawkes in Portland, ME containing promissory note for $20,000.
121	Gelber; Campaigner	8/6/84	Letter from Boston, MA to Arthur Hawkes in Portland, ME containing promissory note for $50,000.

Count	Defendants	Date	Mailing
122	Gelber; Campaigner	8/6/84	Letter from Boston, MA to Arthur Hawkes in Portland, ME containing promissory note for $25,000.
123	Caucus	5/20/86	Letter from New York, NY to Kenneth Johnson in Amesbury, MA.

All in violation of Title 18, United States Code, Section 1341 and 2.

Count One Hundred and Twenty-Four: (18 U.S.C. §371 and 1503 — Conspiracy to Obstruct Justice)

41. Paragraphs 1 through 20 of this Indictment are hereby realleged and incorporated herein.

42. From in or about November, 1984, until the date of this Indictment, in the District of Massachusetts and elsewhere, defendants herein,

LYNDON H. LAROUCHE
THE LAROUCHE CAMPAIGN
INDEPENDENT DEMOCRATS FOR LAROUCHE
MICHAEL GELBER
RICHARD SANDERS
CHARLES PARK
PAUL GOLDSTEIN
JEFFREY STEINBERG
MICHELLE STEINBERG
ROBERT GREENBERG
EDWARD SPANNAUS
ROY FRANKHAUSER
a/k/a/ "Bill Clay"
RICHARD BLACK
JOHN SCIALDONE
CAMPAIGNER PUBLICATIONS, INC.
CAUCUS DISTRIBUTORS, INC.
NATIONAL CAUCUS OF LABOR COMMITTEES

and others known and unknown to the Grand Jury, knowingly and willfully conspired, combined, confederated and agreed to corruptly influence, obstruct and impede the due administration of justice, in violation of Title 18, United States Code, Section 1503.

Object of the Conspiracy

43. The object of the conspiracy was to prevent the United States Grand Jury in and for the District of Massachusetts sitting in Boston, Massachusetts from gathering evidence which would allow the Grand Jury to bring to justice those individuals and corporations criminally responsible for unauthorized use of credit card account numbers described in paragraphs 22 through 38 of this Indictment.

Manner and Means

44. It was part of the manner and means of this conspiracy to obstruct justice that the defendants and others induced defendants MICHAEL GELBER, RICHARD SANDERS and CHARLES PARK the primary Boston, Massachusetts area supporters of defendant LYNDON H. LAROUCHE who had made the unauthorized credit card charges being investigated, to leave the Boston, Massachusetts area so that they could not be questioned by federal law enforcement officials.

45. It was further a part of the manner and means of this conspiracy that the defendants repeatedly failed to deliver to the Grand Jury documents which defendants had been commanded to deliver to the Grand Jury by lawfully served Grand Jury subpoenas.

46. It was further part of the manner and means of this conspiracy that the defendants failed to deliver to the Grand Jury documents which they had been ordered by a United States District Court to deliver to the Grand Jury.

47. It was further a part of the manner and means of the conspiracy that defendants came before the federal grand jury and testified falsely.

48. It was a further part of the manner and means of this conspiracy that defendants made false statements to federal law enforcement officials investigating the credit card fraud.

49. It was a further part of the manner and means of this conspiracy that defendants destroyed incriminating documents by burning these documents and shredding and tearing these documents.

Overt Acts

50. In furtherance of the conspiracy and to effect the object of the conspiracy, the following acts, among others were committed:

1. In or around November, 1984, defendants LYNDON H. LAROUCHE, CAUCUS and NCLC reassigned defendant RICHARD BLACK to the Boston area office of defendant CAUCUS and reassigned defendants MICHAEL GELBER, RICHARD SANDERS and CHARLES PARK from the Boston area office of defendant CAUCUS.

2. In or around November, 1984, defendant MICHAEL GELBER left the Boston, Massachusetts area.

3. In or around November, 1984, defendant RICHARD SANDERS left the Boston, Massachusetts area.

4. In or around November, 1984, defendant CHARLES PARK left the Boston, Massachusetts area.

5. In or around the first week of November, 1984, defendants ROY FRANKHAUSER a/k/a "Bill Clay", JEFFREY STEINBERG, MICHELLE STEINBERG and PAUL GOLDSTEIN and others spoke by telephone and discussed ways in which they could "fix" or "quash" the Boston grand jury investigation.

6. In or around the first week of November, 1984, defendant JEFFREY STEINBERG spoke by telephone to defendant ROY FRANKHAUSER a/k/a "Bill Clay" and instructed defendant ROY FRANKHAUSER a/k/a "Bill Clay" to contact a former Deputy Director of the Central Intelligence Agency and request that he arrange to fix or quash the Boston grand jury investigaiton.

7. In or around the first week of November, 1984, defendant ROY FRANKHAUSER a/k/a "Bill Clay" spoke with defendant JEFFREY STEINBERG by telephone and told him that the way to fix or quash the Boston grand jury investigation was to burn any incriminating documents and

to remove from the Boston, Massachusetts area all the fundraisers suspected of having caused the credit card fraud so that those persons could avoid Grand Jury subpoenas.

8. On or about November 10, 1984, defendant ROY FRANKHAUSER a/k/a "Bill Clay" spoke with defendant ROBERT GREENBERG about relocating Boston area fundraisers away from the Boston grand jury and defendant ROBERT GREENBERG summarized this conversation in his record book by writing "your people in Boston should be unavailable — not there."

9. On or about November, 1984, defendants MICHELLE STEINBERG and ROY FRANKHAUSER a/k/a "Bill Clay" spoke about the likelihood of indictments against four people in Boston and about finding a way to "stop" and "quash" these indictments.

10. On or about November 29, 1984, defendant ROY FRANKHAUSER a/k/a "Bill Clay" dictated and thereafter caused to have sent from Reading, Pennsylvania to defendant JEFFREY STEINBERG in Leesburg, Virginia a written report entitled "COMSTA-C" which stated that records should be burned.

11. In or around the early part of December 1984, defendant LYNDON H. LAROUCHE received from his security staff a copy of the November 29, 1984 COMSTA-C Report authored by defendant ROY FRANKHAUSER and previously referred to in overt act number 10 hereof.

12. On or about December 7, 1984, defendant ROY FRANKHAUSER a/k/a "Bill Clay" dictated and caused to have sent from Reading, Pennsylvania to defendant JEFFREY STEINBERG in Leesburg, Virginia a report entitled "COMSTA-C" which stated that persons involved in the unauthorized use of credit cards should receive "personal transfers . . . for indefinite periods of time" in order to avoid being questioned by federal authorities.

13. In or around the middle of December, 1984, defendant LYNDON H. LAROUCHE received from his security staff a copy of the December 7, 1984 COMSTA-C Report authored by defendant ROY FRANKHAUSER and previously referred to in overt act number 12 hereof.

14. On or about December 12, 1984 defendants EDWARD SPANNAUS and ROY FRANKHAUSER a/k/a "Bill Clay" discussed the unauthorized credit card charge activities of four Boston area fundraisers and defendant EDWARD SPANNAUS wrote in his record book concerning these four persons that "if get them out of country, won't go higher."

15. On or about December 16, 1984, defendants ROY FRANKHAUSER a/k/a "Bill Clay" and ROBERT GREENBERG discussed the Boston grand jury investigation and defendant ROBERT GREENBERG wrote in his record book: "LHL never get indicted (for 1984) . . . Bost. Invest. will be shut down. Get four people out of country — 1 year."

16. On or about December 27, 1984, defendant RICHARD SANDERS travelled from the United States to Canada.

17. On or about December 28, 1984, defendant MICHAEL GELBER wrote out, signed and submitted to the United States Department of State an application for a United States passport.

18. On or about December 28, 1984, defendants MICHAEL GELBER and CHARLES PARK travelled from New York City, New York to Europe on Icelandair flight no. 610.

19. In or around January 23, 1985, defendants LYNDON H. LAROUCHE and MICHELLE STEINBERG discussed their concern that two Boston area fundraisers who had been arrested in Munich, Germany might be

deported back to the United States where they would be questioned about the Boston credit card fraud.

20. In or around the third week of January, 1985, defendant MICHELLE STEINBERG telephoned Forrest Lee Fick in Reading, Pennsylvania and told him that Boston area fundraisers had been sent to Europe, that some of them had been arrested in Germany and defendant MICHELLE STEINBERG instructed Forrest Lee Fick to find out whether the persons under arrest in Germany were subject to being deported to the United States and delivered to the Boston Federal Bureau of Investigation.

21. On or about January 26, 1985 defendant MICHELLE STEINBERG discussed with defendant ROY FRANKHAUSER a/k/a "Bill Clay" how to "spike" the Boston grand jury investigation and about how they expected an Interpol alert for the Boston fundraisers who had been sent to Europe.

22. On or about February 7, 1985, defendants CAUCUS, and CAMPAIGNER, having previously each been served with a federal grand jury subpoena commanding that they each send a keeper of their corporate records to appear before the Boston federal grand jury on February 7, 1985, caused their respective custodians of record not to appear as required.

23. In or about February, 1985, defendant LYNDON H. LAROUCHE spoke with Forrest Lee Fick about ways to "fix" and "quash" the Boston grand jury investigation.

24. On or about February 7, 1985, Sanford Roberts, acting on behalf of defendant TLC, told Stephen Parsons to appear before the Boston grand jury as a keeper of the corporate records of defendant TLC even though as was then well known to defendant TLC, Stephen Parsons did not have the knowledge to act as a keeper of records for defendant TLC.

25. On or about February 7, 1985, defendants EDWARD SPANNUS, ROBERT GREENBERG and ROY FRANKHAUSER a/k/a "Bill Clay" discussed how to impede the Boston grand jury investigation and both defendants EDWARD SPANNAUS and ROBERT GREENBERG wrote in their separate record books that the "Boston situation is serious, we should move to deny them access to documents and people."

26. On or about February 7, 1985, defendants ROBERT GREENBERG, EDWARD SPANNAUS and ROY FRANKHAUSER a/k/a "Bill Clay" discussed their concern that it was "highly possible" that federal law enforcement officials would conduct a search of the Boston office of defendants CAUCUS and CAMPAIGNER.

27. On or about February 8, 1985 defendant JOHN SCIALDONE and Lenore Sanders, a co-conspirator not named in this Indictment, went to the Boston office of defendant CAUCUS, gathered up and thereafter shredded and burned many of the contact cards which had been used by defendants MICHAEL GELBER, RICHARD SANDERS, CHARLES PARK and other Boston fundraisers, which index cards had previously been subpoenaed by the Boston Grand Jury but not produced to the Boston Grand Jury.

28. On or about February 11, 1985, defendants ROBERT GREENBERG and LYNDON H. LAROUCHE discussed impeding the Boston grand jury investigation by making a "vicious personal attack on William Weld" who was then supervising the Boston credit card fraud investigation in his capacity as the United States Attorney for the District of Massachusetts and defendant ROBERT GREENBERG thereafter wrote in his notebook "LHL: vicious personal attack on William Weld".

29. On or about February 14, 1985, defendants MICHELLE STEINBERG, EDWARD SPANNAUS, ROBERT GREENBERG, ROY FRANKHAUSER a/k/a "Bill

Clay" and others discussed their concern that a search warrant was being prepared to enable searches by federal authorities of the Boston and New York offices of defendant CAUCUS and CAMPAIGNER; these defendants also discussed the need to "be prepared across the board for such a search."

30. On or about February 14, 1985, defendants EDWARD SPANNAUS and ROY FRANKHAUSER a/k/a "Bill Clay" discussed their belief that they had "stymied" the "momentum" of the Boston Grand Jury and that if the Boston Grand Jury could not "get lo members" it was "unlikely" that the Grand Jury could "move further up the ladder."

31. On or about February 15, 1985, defendant ROBERT GREENBERG discussed with someone not known to the grand jury that Lenore Sanders and defendant JOHN SCIALDONE had destroyed documents and defendant ROBERT GREENBERG wrote in his record book that "Lenore/Scialdone did a clean up — took some things — burnt them . . . ashes dispersed."

32. On or about February 28, 1985, Gerald Rose, treasurer of and acting on behalf of defendant IDL, told Donald Baier to appear before the Boston grand jury as a keeper of corporate records of defendant IDL even though, as was then well known to defendant IDL, Donald Baier did not have the knowledge to act as a keeper of the corporate records for defendant IDL.

33. In or about March, 1985, in Leesburg, Virginia, defendants PAUL GOLDSTEIN and ROBERT GREENBERG accompanied Forrest Lee Fick from the Wheat Building on Main Street to the Barrister Building on Route 7 and, upon reaching the Barrister Building, defendant PAUL GOLDSTEIN told Forrest Lee Fick to guard the Barrister Building closely and defendant ROBERT GREENBERG told Forrest Lee Fick that "the F.B.I. would love to have what is in the building".

34. In or about March, 1985, defendant LYNDON H. LAROUCHE instructed defendant EDWARD SPANNAUS on how to handle the Boston grand jury investigation and told him that "we are going to stall, tie them up in the courts . . . just keep stalling, stall and appeal, stall and appeal."

35. On or about March 29, 1985, defendants CAUCUS and CAMPAIGNER failed to obey an order of a United States District Judge that they appear through a representative and show cause why they should not be held in contempt of court for failing to comply with grand jury subpoenas previously issued.

36. On or about April 25, 1985, defendant RICHARD BLACK falsely told a Special Agent of the Federal Bureau of Investigation and a Special Agent of the United States Secret Service that he had not received any complaints about unauthorized credit card charges when in truth and in fact he had received such complaints.

37. On or about May 14, 1985, Paul Gallagher, Executive Director of and acting on behalf of FUSION told Ira Liebowitz to appear before the Boston grand jury as keeper of the corporate records of FUSION even though, as was then well known to FUSION, Ira Liebowitz did not have the knowledge to act as a keeper of the corporate records.

38. On or about June 27, 1985, defendant RICHARD BLACK appeared before the Boston grand jury as the keeper of records of NDPC even though, as he then and there well knew, he did not have the knowledge to act as keeper of the corporate records for NDPC.

39. On or about July 25, 1985, defendants MICHELLE STEINBERG and ROY FRANKHAUSER a/k/a "Bill Clay" discussed their concern that the Boston Grand Jury investigation would be reactivated by United States Attorney William Weld if "someone returned from exile."

40. On or about August 8, 1985, Linda deHoyos, president of defendant CAMPAIGNER, caused Susan Welsh to appear before the Boston Grand Jury as Keeper of the Records of defendant CAMPAIGNER even though, as was then well known to defendant CAMPAIGNER, Susan Wells could not act as a keeper of records.

41. On or about September 26, 1985, ELLIOT GREENSPAN (a co-conspirator not named in this count) having previously been ordered to testify to the Boston Grand Jury by a United States District Judge, refused to testify to the grand jury as ordered.

42. On or about November 5, 1985, ELLIOT GREENSPAN (a co-conspirator not named in this count) acting as keeper of records of defendant CAUCUS, refused to deliver to the grand jury the contact cards (previously referred to in paragraphs 27, 28, 29 and 32 of this Indictment) which the grand jury had previously subpoenaed.

43. On or about November 7, 1985, Susan Welsh acting on behalf of defendant CAMPAIGNER , having previously been ordered to testify to the Boston Grand Jury by a United States District Judge, refused to testify to the Grand Jury as ordered.

44. Commencing on or about December 2, 1985, and continuing up until the date of this Indictment, having been ordered by a United States District Judge to deliver contact cards (previously referred to in paragraphs 30, 31 and 32 of this Indictment) to the Boston Grand Jury, defendants CAUCUS and ELLIOT GREENSPAN have refused to deliver those contact cards as ordered.

45. On or about February 2, 1986, defendants PAUL GOLDSTEIN and ROY FRANKHAUSER a/k/a "Bill Clay" discussed their concern that the Boston Grand Jury had not "shut down" its credit card fraud investigation.

46. On or about March 18, 1986, defendant ROY FRANKHAUSER a/k/a "Bill Clay" said to defendant PAUL

GOLDSTEIN that law enforcement officials would go to the office of defendant NCLC in Weisbadden, West Germany to question people and, having been thus warned, defendant PAUL GOLDSTEIN wrote in his record book that the Wiesbaden office "has to be prepared for everything – any Boston people relocated."

47. On or about June 11, 1986, defendants ROY FRANKHAUSER a/k/a "Bill Clay" and MICHELLE STEINBERG discussed the Boston Grand Jury investigation and defendant MICHELLE STEINBERG wrote in her record book that the law enforcement authorities in Boston were "looking for 3 specific individuals which will bring them up the daisy chain."

All in violation of Title 18, United States Code, Sections 1503 and 371.

Count One Hundred and Twenty-Five: [Defendants ELLIOT GREENSPAN and CAUCUS DISTRIBUTORS INC.] (18 U.S.C. §§401 and 402 – Criminal Contempt)

51. Commencing on or about December 2, 1985, and continuing up to and including the date of this Indictment, in the District of Massachusetts, defendants herein

ELLIOTT GREENSPAN
CAUCUS DISTRIBUTORS, INC.

having been lawfully ordered on November 22, 1985 by United States District Judge A. David Mazzone to comply with a subpoena issued by the United States Grand Jury which commanded the production of certain documents relating to fundraising activities, namely index cards containing information about fundraising activities, did willfully disobey and resist the lawful order of the Court by refusing to deliver the index cards to the grand jury as ordered.

All in violation of Title 18, United States Code, Sections 401(3) and 402.

A TRUE BILL

_____

Foreman of the Grand Jury

_____

Assistant United States Attorney

DISTRICT OF MASSACHUSETTS; June 30, 1987 turned into the District Court by the Grand Jurors and filed.

_____

Deputy Clerk

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	) CRIMINAL No._____	
	)	
v.	) VIOLATIONS:	
	)	
LYNDON H. LAROUCHE, JR.,	) Ct. 1:	18 U.S.C. 371 –
Cts. 1 - 13	)	Conspiracy to
WILLIAM WERTZ,	)	Commit Mail
Cts. 1 - 11	)	Fraud
EDWARD SPANNAUS,	)	
Cts. 1, 3 - 11	) Cts. 2-12:	18 U.S.C. 1341 –
MICHAEL BILLINGTON,	)	Mail Fraud
Cts. 1, 2, 4 and 5	)	
DENNIS SMALL,	) Ct. 13:	18 U.S.C. 371 –
Cts. 1, 3, 8 and 10	)	Conspiracy to
PAUL GREENBERG,	)	Defraud the
Cts. 1, 9 and 11	)	Internal Revenue
JOYCE RUBINSTEIN,	)	Service
Cts. 1, 6 and 7	)	

INDICTMENT
October 1988 Term – At Alexandria

COUNT ONE

THE GRAND JURY CHARGES THAT:

INTRODUCTION

A. THE ORGANIZATION

1. At all times relevant to this indictment, the National Caucus of Labor Committees (NCLC) was a group of individuals and business entities associated together for the common purpose of promoting the views and personal welfare of the defendant LYNDON H. LAROUCHE, JR. The NCLC also was known as the International Caucus of Labor Committees (ICLC), and the "LaRouche organization."

2. The NCLC began as an informal association in the early 1970s but evolved over the ensuing years into a highly structured organization. The defendant LYNDON H. LAROUCHE was the Chairman of the NCLC and maintained ultimate control and decision-making authority over all its operations and functions. LAROUCHE stated that he was the supreme authority within the organization on all matters whatsoever and that if anyone did not agree with him on any topic they should leave.

3. LAROUCHE's directives were carried out through a hierarchical command structure within the NCLC. The National Executive Committee (NEC) was the governing body of the NCLC. It consisted of senior members of the NCLC who had areas of management responsibility such as "Fundraising"; "Finance"; and "Legal." Members of the NEC met both as a group and individually with LAROUCHE to inform him of the operations of the organization and to determine procedures and requirements for the entire NCLC. The NEC members then, in turn, passed on those directives and requirements to members of the National Committee (NC), who had the responsibility of seeing that the directives and requirements were carried out by the general membership of the NCLC. In addition, there was a "Security and Intelligence" staff whose principle functions were: (1) transmitting information, messages and questions from members of the organization and others to LAROUCHE; (2) passing LAROUCHE's directions to members of the organization; (3) providing for LAROUCHE's personal needs such as housing, food and clothing; and (4) providing LAROUCHE's personal "security."

4. During the 1970s and early 1980s, the NCLC established Regional and local offices throughout the United States. Regional offices were established in New York, New York; Chicago, Illinois; Houston, Texas; Baltimore, Maryland; and Los Angeles, California. In addition, local offices were established in, among other places, Boston, Massachusetts; Philadelphia and Pittsburgh, Pennsylvania; San Francisco, California; and Seattle, Washington. For organizational and management purposes, the local offices received directives from and reported back to the Regions and the Regions reported to the national

headquarters in New York. Each Regional Office was managed by at least one NC member. Regional and local offices often operated under names which referred to their affiliation with the NCLC such as the Seattle Labor Committee, the Los Angeles Labor Committee, and the Houston Labor Committee.

5. In addition to the regional and local offices, a National Center was established with an office in New York City, New York, separate and apart from the New York Region office. The National Center was the national headquarters of the NCLC. In or about March, 1985, at the direction of defendant LAROUCHE, the National Center moved to and began operating in Leesburg, Virginia, within the Eastern District of Virginia. The defendant LYNDON H. LAROUCHE, JR. established residence in the Leesburg area in or about April, 1983. Between then and in or about March, 1985, most of the members of the NEC also established residence in Leesburg.

6. Various corporations were established by NCLC members for the purpose of fundraising, conducting the business and commercial affairs of the organization, supporting its members, and supporting LYNDON H. LAROUCHE. LAROUCHE exercised ultimate control over these corporations and his directives were enforced by NEC and NC members. The management of these corporations was comprised exclusively of NCLC members, with a single such member often serving in the management of several corporations. The corporations also were staffed primarily by NCLC members. The finances of the corporations were substantially commingled. The principal corporate entities included:

a. Campaigner Publications, Inc. (CPI), a New York corporation established in 1974, ostensibly for the purpose of publishing books and periodicals;

b. Caucus Distributors, Inc. (CDI), a New York corporation established in 1981, ostensibly for the purpose of distributing the publications of Campaigner and Caucus and conducting the fundraising activities of the NCLC;

c. Fusion Energy Foundation, Inc. (FEF), a tax-exempt New York Corporation, ostensibly established to promote the use of fusion energy sources and to publish *Fusion* magazine;

d. New Benjamin Franklin House Publishing Co., Inc. (NBFH), a New York corporation established in 1978, ostensibly for the purpose of publishing the work of LAROUCHE, members of the NCLC, and others;

e. Publications and General Management Co. (PGM), was established in 1981, as the financial management company for the LAROUCHE organization. Also known as the National Finance Office of the organization;

f. Publication Equities, Inc. (PEI) established in 1984 for the purpose of purchasing and investing in real estate.

7. The defendant LYNDON H. LAROUCHE, JR. held himself out as a candidate for the presidency of the United States in 1984. Two unincorporated campaign committees were established under the Federal Election Campaign Act (2 U.S.C. 431, *et. seq.*) for the purpose of raising funds and otherwise supporting LAROUCHE'S presidential bid. LAROUCHE's attempt to seek the Democratic Party's nomination for the presidency operated under the name of "The LaRouche Campaign" (TLC). In June of 1984, "Independent Democrats for LaRouche" (IDL) was formed to continue campaign-related activities after LAROUCHE failed to obtain the Democratic Party's nomination. Although the monies raised by these entities were largely kept separate from those raised by the entities referred to in paragraph 6 above, the campaign committees otherwise operated in the same manner as those entities and were established, staffed and managed by NCLC members. LAROUCHE exercised ultimate control over the campaign committees and his directives were enforced by NEC and NC members. Fundraising was controlled and carried out by the same persons involved in fundraising for the non-campaign entities.

B. FUNDRAISING OPERATIONS

8. At all times relevant to this indictment, the NCLC, together with its associated individuals and entities, raised money to fund its operations and further its purposes. Fundraising was accomplished through borrowing money from individuals, selling literature and obtaining contributions. A substantial portion of this fundraising was carried out through telephone solicitations undertaken by NCLC members who were assigned to "Phone Teams" in each of the organization's offices. These telephone solicitors maintained "contact cards" containing the name, phone number and interests of each person they contacted, together with a history of contacts with that person.

9. Beginning in or about mid-1983, LAROUCHE undertook steps to restructure the fundraising operations and requirements of the organization. By late 1983, the fundraising quotas of the organization began to increase dramatically. As a consequence, borrowing funds from individuals increased. During the 1984 Presidential campaign, the campaign committees borrowed approximately $4.3 million. As of January, 1984, the organization's non-campaign debt, also known as "infrastructure" debt, was approximately $3 million. Between January, 1984 and approximately September, 1986, the organization's infrastructure debt increased by approximately $30 million.

10. The defendant LYNDON H. LAROUCHE, JR. controlled all the fundraising activities of the NCLC. He stated to the membership that he had complete control over the finances of the organization. LAROUCHE stated that organization members were to consider it their duty to communicate to him any and all information about the organization's finances, and that the failure to do so would be considered a crime "morally equivalent to treason," subject to the "moral equivalent of being shot at dawn."

11. The defendant WILLIAM WERTZ was a member of the NCLC who, during the early 1980s, was the NC member in charge of fundraising in the Los Angeles Region office. In or about January, 1984, defendant LAROUCHE promoted WERTZ to membership in the NEC, moved him to the National

Center in New York City, New York, and put him in charge of carrying out LAROUCHE's directives relating to all NCLC fundraising on a nationwide basis. WERTZ continued in that role after the National Center moved to Leesburg in or about March, 1985, and thereafter until at least April 19, 1987.

12. The defendant EDWARD SPANNAUS was a member of the NCLC and the NEC member who carried out LAROUCHE's directives on "legal" matters, which included handling some complaints and all lawsuits by unrepaid lenders to the organization, investigations by law enforcement and regulatory agencies, and negotiating and purchasing the organization's real estate holdings. SPANNAUS also was President of Campaigner Publications, Inc., from its inception until October, 1983, Vice-President of Publications and General Management from December, 1981, until October, 1983, a Director of Publication Equities, Inc., from April, 1984 through December, 1984, and Treasurer of The LaRouche Campaign. SPANNAUS participated along with LAROUCHE, WERTZ and others in formulating and implementing organization policies regarding loans. His name appeared on promissory notes issued by The LaRouche Campaign; he met with LAROUCHE to discuss fundraising objectives and procedures; he wrote to all lenders and contributors of The LaRouche Campaign; handled many complaints and lawsuits brought by unrepaid lenders to the organization; and he approved the use of "letters of indebtedness" employed by the various organizational entities to induce persons to lend money to the organization, including Caucus Distributors and Campaigner Publications.

13. The defendant MICHAEL BILLINGTON was a telephone fundraiser assigned in early 1984 to the Boston local and New York Regional offices and, beginning in or about Spring, 1984 to the National Center. He moved to Leesburg, Virginia at the same time as the operations of the National Center, in or about March, 1985.

14. The defendant DENNIS SMALL was an NC member. He engaged in specialized borrowing of large sums in conjunction with telephone solicitors on phone teams in the National Center and at other offices nationwide.

15. The defendant PAUL GREENBERG was the head of fundraising in the Chicago Region office.

16. The defendant JOYCE RUBINSTEIN was a fundraiser in the New York Region office.

OBJECT OF THE CONSPIRACY

Beginning in or around July, 1983, and continuing until at least April 19, 1987, within the Eastern District of Virginia and elsewhere, LYNDON H. LAROUCHE, WILLIAM WERTZ, EDWARD SPANNAUS, MICHAEL BILLINGTON, PAUL GREENBERG, DENNIS SMALL and JOYCE RUBINSTEIN, knowingly and willfully combined, conspired, confederated and agreed with each other, and with others known and unknown to the grand jury, to devise a scheme and artifice to defraud and to obtain money by false and fraudulent pretenses, representations and promises, and for the purpose of executing and attempting to execute such scheme or artifice, to place or cause to be placed in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, in violation of Title 18, United States Code, Section 1341.

MEANS AND METHODS OF THE CONSPIRACY

17. The said unlawful combination, conspiracy, confederation and agreement was to be and was accomplished by the following means and methods and in the following manner, each of which was a part of the conspiracy.

18. It was a part of the conspiracy that the defendants LAROUCHE, WERTZ, and SPANNAUS directed and commanded the defendants BILLINGTON, SMALL, GREENBERG and RUBINSTEIN, together with others both known and unknown to this Grand Jury, to raise funds by promising that money loaned to the organization would be paid back at specific times and with specific rates of interest, when the defendants well knew that the loans would not be repaid in the manner promised.

19. It was a further part of the conspiracy that the defendants and their co-conspirators raised funds by promising that money loaned to the organization would be used for a specific purpose such as the publication of a specific book or the funding of a particular project, when in fact the defendants knew the funds thus raised would not be applied to such a specific purpose, but instead would become a part of the general operating funds of the organization.

20. It was further a part of this conspiracy that a fundraising quota was set each week by the defendants LAROUCHE, WERTZ and others. The fundraising quotas were set for the entire NCLC as a whole, and then divided into quotas for each Regional and local office of the NCLC, and for each fundraiser.

21. It was further a part of the conspiracy that the defendant LYNDON H. LAROUCHE did instruct NCLC members to use "any means short of thievery and thuggery," to meet fundraising quotas. LAROUCHE repeatedly told NCLC members that the population at large consisted of "freeloaders," who "owed" the organization money for saving them from various "holocausts," and that people who did not give money to the organization were "not morally fit to survive." LAROUCHE stated that his fundraisers were helping their contacts become better people by obtaining their money. LAROUCHE described fundraising as the "logistics of warfare" and stated that the organization was in the biggest war ever fought.

22. It was further a part of this conspiracy that defendant WERTZ communicated the quotas on a daily basis in person to the members of the National Center phone team and telephonically to NC members in charge of the various Regional and local offices nationwide. These quotas were communicated by WERTZ as part of his "daily briefing" to fundraisers. WERTZ frequently told the fundraisers that the quotas had been set and approved by LAROUCHE.

23. It was further a part of this conspiracy that quotas were enforced by WERTZ and others by placing extreme pressure on fundraisers. Fundraisers were required to work long hours, often twelve to eighteen hours a day, six to seven days a week.

Fundraisers who failed to meet their quota were subjected to harassment, insults and ridicule in front of other members.

24. It was further a part of this conspiracy that progress toward quotas was reported to WERTZ several times a day by NC members throughout the country. Written reports were prepared on a daily and weekly basis of nationwide progress towards quota and submitted to WERTZ. WERTZ reported to LAROUCHE on progress toward quotas both directly and through intermediaries.

25. It was further a part of the conspiracy that the defendants BILLINGTON, SMALL, GREENBERG, RUBINSTEIN, and others known and unknown to the Grand Jury, at the direction and under the control of defendants LAROUCHE and WERTZ, telephonically contacted individuals to solicit loans to the organization and its associated entities. These telephone solicitations contained numerous false, fictitious and fraudulent statements and representations, made for the purpose of obtaining loans, including:

a. That money loaned to the organization would be repaid on a specific date;

b. That interest payments on the loans would be made in specific amounts on specific dates;

c. That money loaned to the organization was a safe investment;

d. That money loaned to the campaign committees would be repaid out of federal matching funds;

e. That persons could earn an interest rate on money loaned to the organization equal to or higher than that which they were receiving from financial institutions;

f. That no one lending money to the organization had ever lost money;

g. That specific loans would be devoted to certain specific expenditures; and

h. That loans would be repaid out of certain specific income producing events, such as book sales.

26. It was further a part of the said conspiracy that the defendants BILLINGTON, SMALL, GREENBERG and RUBINSTEIN, together with others known and unknown to the grand jury, at the direction and under the control of defendants LAROUCHE, WERTZ, and SPANNAUS, did issue or cause to be issued, for delivery through the United States Mail, promissory notes and letters of indebtedness to persons who had loaned money to NCLC related entities, which notes and letters contained false, fictitious and fraudulent representations and promises, including:

a. That the principal amount of the loan would be repaid by a certain date; and

b. That interest payments on the loan would be made in certain amounts, on certain dates.

27. It was further a part of this conspiracy that the defendants BILLINGTON, SMALL, GREENBERG and RUBINSTEIN, and others known and unknown to the Grand Jury, at the direction and under the control of the defendants LAROUCHE and WERTZ, at the time they made telephone solicitations and caused promissory notes to be issued, omitted to state material facts which they knew were necessary to make the solicitations and representations not misleading, in light of the circumstances under which they were made. These omissions of material facts included:

a. That the policy of the NCLC was not to repay loans in accordance with the promises made to lenders;

b. That between January, 1984 and September, 1986, the organization never established a system for making, and never made, routine payments of promised principal and interest on loans in general;

c. That the funds of the organization were dispersed according to certain priorities and that loans would only be repaid to the extent they fit those priorities;

d. That neither the NCLC or any of its related entities ever had been profitable;

e. That neither the NCLC or any of its related entities ever had set aside sufficient funds or assets with which to repay loans;

f. That loans to the campaign committees were not eligible to receive federal matching funds for loans;

g. That the NCLC and its related entities had failed to make timely payments on many loans made prior to and during the conspiracy;

h. That after making a loan to the organization, the lender would be repeatedly contacted to make further loans;

i. That after making a loan to the organization, the lender would be asked to forgive that loan, extend its date of repayment, or otherwise modify the loan; and

j. That loans were only repaid as an inducement for further fundraising solicitations or occasionally in response to complaints of lenders, and then only if the lender posed a legal or "security" threat to the organization, or if the lender was suffering extreme hardship as a result of non-payments.

28. It was further a part of this conspiracy that the defendants and their co-conspirators made some payments of principal and interest to lenders as an inducement to them to loan more money

29. It was further a part of the conspiracy that the defendants and their co-conspirators contacted persons who had loaned the organization money in an attempt to renegotiate the loans. The defendants and their co-conspirators sought to have lenders delay the time for repayment of loans, reduce the interest payable on loans and even forgive all or parts of loans.

These renegotiations were sometimes sought by NCLC members on the representation that, in exchange for these renegotiations, the lender would be more likely to actually receive repayment of the loan.

30. It was further a part of the conspiracy that the defendants and co-conspirators, when they received complaints from lenders about nonpayment, would seek to avoid detection of their scheme and lull lenders into a false sense of security that their loans would be repaid, by making further false, fictitious and fraudulent statements, including:

a. That the failures to repay were the result of a temporary, unexpected cash-flow shortage;

b. That the cash flow shortage was about to be resolved and that repayments would soon resume;

c. That the organization was engaged in a "scramble to repay loans as rapidly as possible";

d. That filing lawsuits, obtaining a lawyer, or otherwise attempting to collect on a loan would only raise the organization's expenses and thereby decrease the likelihood of repayment; and

e. That the organization did not have any money for loan repayments.

31. It was further a part of this conspiracy that the defendant LYNDON H. LAROUCHE exercised control over how the organization spent its funds. He set priorities for payments to be made out of the cash available to the organization. As the defendants and their co-conspirators were well aware, the establishment and maintaining of these payment priorities resulted in substantial failures to repay loans, prior to and throughout the course of the conspiracy.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendants and their co-conspirators performed overt acts in the Eastern District of Virginia and elsewhere, including but not limited to the following:

1. In or about the Summer of 1983, at the annual NCLC meeting, the defendant LYNDON H. LAROUCHE, JR. stated that persons who do not give their money in some way to the organization are not "morally fit to survive."

2. In or about the Fall of 1983, defendant LAROUCHE promoted the defendant WILLIAM WERTZ to a position as an associate NEC member.

3. In or about November, 1983, the defendant PAUL GREENBERG solicited a loan from Herschel Zirger and represented that the loan would be paid back in full with interest.

4. In or about January, 1984, at the direction of LAROUCHE, WERTZ moved to New York, New York, and assumed a position as the nationwide head of fundraising at the National Center Region office of the NCLC.

5. In or about January, 1984, WERTZ presented a fundraising proposal to the NEC, which called for increased fundraising requirements and, as a result, the reassignment of various NCLC members from other assignments to fundraising.

6. On or about January 14, 1984, LAROUCHE told NEC members, including the defendant EDWARD SPANNAUS, that WERTZ's proposal should be implemented.

7. In or about January, 1984, numerous NCLC members were reassigned from tasks involving publications and research to fundraising.

8. In or about January, 1984, WERTZ established a National Center "Phone Team" at the National Center office in New York City, New York.

9. In or about January, 1984, Christian A. Curtis, was reassigned from research work to the National Center Phone Team.

10. In or about January, 1984, WERTZ instructed Curtis to discuss loan-raising techniques with Alan Levinson, then a fundraiser in the New York Region office. Levinson told Curtis that fundraising contacts were a "bunch of poor sheep" who actually wanted to be talked into giving money. Levinson told Curtis not to listen to or to care about the problems and concerns of his contacts and that he should have only one concern: "Get the money."

11. In or about January, 1984, Curtis repeated to WERTZ the advice he had received from Levinson, and WERTZ responded by saying "Good."

12. In or about January, 1984, WERTZ brought Rochelle Ascher to spend a week with the National Center Phone Team in New York to train them in fundraising techniques.

13. In or about January, 1984, unindicted co-conspirator Rochelle Ascher told the members of the phone team that they should always convey a sense of urgency in their telephone solicitations by stating that there were a series of immediate crisis facing the world, the organization or LAROUCHE. Ascher stated that it did not matter whether these pitches were precisely true.

14. In or about January, 1984, the defendant PAUL GREENBERG discussed fundraising techniques with Curtis and stated: "Don't listen to their excuses. The minute you do you're dead. They're lying to you anyway. You make a $1,000 hit and you think it's a big deal. To the asshole you raised it from it's chump change."

15. In or about June, 1984, the defendant MICHAEL BILLINGTON advised Curtis on what to say to potential lenders as follows: "You give them your personal word of honor. And you don't hesitate. Very calmly assure them it's perfectly safe, that you guarantee it personally. . . . You say exactly, 'I give you my personal word of honor.' "

16. In or about June or July, 1984, BILLINGTON was reassigned from the New York Region to the National Center Phone Team.

17. On or about June 7, 1984, WERTZ proposed that LAROUCHE set strict guidelines on loan repayments, namely "to either forget it or forget it indefinitely."

18. On or about June 7, 1984, defendant EDWARD SPANNAUS wrote in his notebook: "Lyn . . . Loans—forgive or forget."

19. In or about July or August, 1984, during the course of a morning briefing at the National Center office in New York City, WERTZ stated that there was "no such thing as a loan" to the LAROUCHE organization, that solicitors should attempt to obtain forgiveness or rollovers of all loans, and that repayments would only be made to lenders who could be of financial or political benefit to the organization, or who posed a "security" or legal threat to the organization.

20. On or about October 7, 1984, Richard Welsh wrote a memorandum to defendants LAROUCHE, WERTZ, SPANNAUS, and others, regarding loans and contributions to the campaign committees, stating:

> a. That requests for loan repayments were referred to the NC member of the relevant region who would direct the original fundraiser to contact the lender and seek to obtain conversion of the loan to a contribution or to have repayment delayed;

b. That in "intractable cases, or those of clear hardship to the lender, the NC member would recommend repayment to Will. Will would screen these requests; and if approved, the NC would notify Kathy S. for payment scheduling and issuance";

c. That "[a] very large number of lenders are being left totally unresolved: neither forgiving, nor extending, nor being proposed for payment scheduling";

d. That the legal staff had become increasingly involved in handling complaints; and

e. That the organization needed a procedure for obtaining forgiveness of loans.

21. In or about October, 1984, Richard Welsh delivered the memorandum referred to above in Overt Act 20 to WERTZ and SPANNAUS and, by courier, to LAROUCHE.

22. In of about October, 1984, Gerald Rose discussed the memo referred to above in Overt Act 20 with Richard Welsh.

23. On or about November 6, 1984, LAROUCHE wrote letters to campaign lenders falsely stating that The LaRouche Campaign and Independent Democrats for LaRouche were both engaged in a "scramble to repay loans as rapidly as possible."

24. On or about December 10, 1984, defendant JOYCE RUBINSTEIN wrote a memorandum titled, "Special Report on Major Contributors," in which she summarized the loan status of several lenders in part as follows:

a. "Helen Murray — . . . She has never gotten any payments as far as I know and it would be very

important to get her some kind of payments as she has been doing a lot of organizing, raising $ from friends, etc."

b. "Arthur Hawkes – . . . has loaned us his life savings. . . . I feel that if he gets $2,000/month interest payment we will be able to renegotiate the $50,000 due in January."

c. "Richard McDowell – . . . He has never gotten any payments."

25. On or about December 13, 1984, defendant GREENBERG wrote a memorandum summarizing the loan status of several lenders and stated in part:

a. "David Kalen – He has lent and given approximately $27,000 this year. If we pay him $1400 which is a combined principal and interest payment we could immediately get $5–10,000 more from him."

b. "Paul Wittke – . . . If we pay him $1314/mo. and pay back approximately $2500 other dollars he will be calm and there will be a lot more $$$."

c. "Lyndon Harman – . . . The problem is that he has had monthly payments due and five loans due and we haven't done one cent to this guy since July."

d. "Walter Wright – . . . We should however pay him something both for amelioration and for further bucks."

e. "Edna Kornelovich and Cece Rudell – . . . They are having tremendous business problems as they near retirement so we have to make a payment arrangement with them and then keep it. The one arrangement we made we didn't keep."

26. In or about April 1, 1985, a memorandum written by Wayne Hintz was discussed at an NEC meeting by

WERTZ and others. The memorandum discussed "infrastructure" loans, attached a list of problem lenders who were not being repaid and stated that:

a. "1984 was the 'Year of the Loan' in which a majority of income was comprised of loans."

b. Loan principal for 1984 and the first quarter of 1985 had reached approximately $10,000,000, of which 90% would come due in 1985;

c. Most available funds were being devoted to a few categories of lenders, namely, large loans, loans over which law suits were in active negotiation with attorneys, loans from banks, special projects such as building acquisitions and construction, and security related loans;

d. "Since almost all of our resources are devoted to dealing with the small number of people represented in the above categories, we are left with no plan for any sort of orderly payment of interest (or principal) for the vast majority of lenders"; and

e. "Even the relatively paltry interest payments on these loans are rarely made."

27. On or about April 2, 1985, Gerald Rose, the NEC member in charge of overseeing organization payments, advised Wayne Hintz that the NEC would budget $80,000 per week for payments against infrastructure loan principal and interest.

28. In or about the Spring of 1985, WERTZ advised telephone fundraisers at the National Center that the infrastructure loan repayment budget was $80,000 per week.

29. On or about April 10, 1985, defendant PAUL GREENBERG traveled to Conroe, Texas, and met Hershcel Zirger and solicited a loan. GREENBERG represented to Zirger that Caucus would pay him 10.5% annual

interest on his loans and that principal and interest would be repaid 45 days from the date of the loan.

30. On or after April 10, 1985, GREENBERG caused an unsecured promissory note to be mailed to Herschel Zirger, promising to repay his loan of $45,000.

31. On or about April 13, 1985, defendant RUBINSTEIN promised Elizabeth Sexton that if she wrote a check to Caucus Distributors, Inc., in the amount of $14,300, RUBINSTEIN would provide her with a promissory note which would include that amount plus all prior loans, for a total of $100,000, repayable in one year at 17½% interest, compounded quarterly.

32. On or about May 3, 1985, Anita Gallagher telephoned Lita Witt and solicited a loan to Caucus for the publication of "Dope, Inc."

33. On or about May 7, 1985, Anita Gallagher wrote and mailed a letter to Lita Witt explaining the "investment" which had been proposed by telephone and stating:

a. That 50,000 copies of the book would be published in 30 days at a cost of $2 per book;

b. That the book would sell at $10 a copy;

c. That prior printings of the book had sold out;

d. That Witt's investment was secure because the sale of the books would be profitable.

34. On on about May 15, 1985, the defendant EDWARD SPANNAUS wrote a letter to contributors and lenders of The LaRouche Campaign and Independent Democrats for LaRouche. That letter stated, among other things: "Now, we are happy to report, our planned loan repayment program, which was totally disrupted, has been restored."

35. On or about May 20, 1985, Frank Bell wrote and distributed a memorandum to Regional NCs and loan repay

officers, setting forth the organization's campaign loan repayment policy as follows: "The LP officers must act as the humanist scrooge. Were we to repay all the loans incurred we would be paying off the 1984 campaign long after the 1990 Congressional elections, at present rates. 'Forgiveness' is the aim." The memorandum then set forth the repayment priorities as follows:

> a. "The Hardship/Medical Category [Category One] is not for every lender who pulls at your heart strings about needing money to finance the opening of his new apple stand. It is reserved for real LaRouche supporters in dire straights whom we may help on a *shortterm* basis";
>
> b. "The Legal/Security Category [Category Two] is not the domain of every $1000 overdue lender with a Brother-in-Law who made it through Fordham Law School. This category is reserved for those who have *active* court cases against us or who pose a danger to the organization";
>
> c. "The Political Category [Category Three] is not the dumping ground for those Phone Team contacts who make themselves obnoxious by calling during soap opera commercials. It is the reserve of supporters who are judged to be people who will continue to back the LaRouche faction as long as they can be assured of our earnest commitment to follow through on our agreements as best we can, considering the biological, nuclear, and financial holocausts we are working to stave off";
>
> d. "The Schedule Category [Category Four] (which will be paid at the end of each cycle – before Category One of the next cycle) is for those supporters who simply are insistent on getting their monies refunded on a regular basis."

36. On or before June 10, 1985, defendant MICHAEL BILLINGTON promised Dorothy Powers that if she loaned $30,000 to Caucus, the loan would be repaid at 12% interest in one year.

37. On or about June 9, 1985, BILLINGTON executed a promissory note on behalf of Caucus agreeing to pay the principal sum of $30,000 and interest of 12% quarterly to Dorothy Powers.

38. On or about July 30, 1985, Elizabeth C. Chambliss called Alan Rither and arranged a telephone conversation between Alan Rither and the defendant DENNIS SMALL.

39. On or about July 30, 1985, SMALL called Alan Rither and solicited a loan from the trust fund of Clifford Rither. SMALL represented:

(a) that he was looking for investors to help in the publication of the book "Dope, Inc.";

(b) that a loan made by Rither to Caucus would be repaid in full; and,

(c) that interest of 12% per annum would be paid on the loan.

40. On or about August 19, 1985, SMALL caused a letter of indebtedness to be prepared and mailed acknowledging a $10,000 loan by Mr. Clifford Rither.

41. On or about August 10, 1985, BILLINGTON solicited a loan from Lita Witt, who refused to make an additional loan unless and until she received interest due her on a prior loan.

42. On or about August 10, 1985, Anita Gallagher telephoned Lita Witt and agreed to make an immediate interest payment.

43. On or about August 10, 1985, Anita Gallagher wrote a check on her personal account for $165.00 and mailed it to Lita Witt.

44. On or about August 18, 1985, BILLINGTON telephoned Lita Witt and requested an additional loan to be used for the publication of "Dope, Inc.", to be repaid from proceeds of the sale of that book.

45. On or about August 28, 1985, BILLINGTON caused a letter of indebtedness to be mailed to Lita Witt acknowledging her $5,000 loan.

46. On or about October 20, 1985, defendant LAROUCHE stated at an NEC meeting: "400 to 450 sales, 150 loans. Has to happen! No excuse! Not a goal, utopian target — has to happen every week! No way to reduce spending. Things can't cut. Security, legal, 200 to 220 a week. . . . Economize and won't have organization one morning."

47. On or about November 12, 1985, BILLINGTON contacted Audrey Carter by telephone to solicit a $10,000 loan to Caucus for one year at 10% interest, payable quarterly.

48. On or about November 12, 1985, BILLINGTON caused a letter of indebtedness to be mailed to Carter from Leesburg, Virginia, promising repayment of $10,000 principle on November 12, 1986 at 10% interest, payable quarterly.

49. On or about early November, 1985, defendant JOYCE RUBINSTEIN instructed Elizabeth Sexton on how to obtain a bank loan, and promised Sexton that if she obtained such a loan and delivered the proceeds to Caucus, that the organization would make monthly payments sufficient to cover the payments which would be due to the bank.

50. On or about November 18, 1985, RUBINSTEIN caused a letter of indebtedness to be mailed to Elizabeth Sexton, which letter promised to repay $4,000 in eight monthly installments of $250 and a final payment of the remaining balance.

51. On or about November 30, 1985, RUBINSTEIN promised Cecilia Landegger that if she loaned $10,000 to Caucus, it would be repaid in eight months at 13% interest.

52. On December 4, 1985, BILLINGTON contacted Audrey Carter by telephone and solicited a $50,000 loan to Caucus for one year at 10% interest, payable quarterly.

53. On or about December 4, 1985, RUBINSTEIN caused a letter of indebtedness to be mailed to Cecilia Landegger acknowledging her $10,000 loan.

54. On or about December 5, 1985, GREENBERG asked Gerry Corbin to loan $10,000 to Caucus and represented:

a) That Caucus would have no problem paying 12% interest on the loan;

b) That the organization solicited loans all the time and that all had been paid back without difficulty;

c) That Corbin's investment would be returned, with interest, within seven days after demand; and

d) That the organization would not seek forgiveness of the loan.

55. On or about December 5, 1985, GREENBERG requested issuance of a letter of indebtedness to Gerry Corbin.

56. On or about mid-December 1985, after Audrey Carter had declined to make a large loan to the organization and offered instead to make occasional "gifts" of $1,000, BILLINGTON stated: "I mean the large thing is actually better for you in the long run because it means that the money is continuing to pay you the interest that you need along the way."

57. On or about December 16, 1985, SMALL and Larry Hecht promised Martha Van Sickle that if she loaned

$250,000 to Caucus she would be repaid the principal plus interest in installments by August 20, 1986.

58. On or about December 18, 1985, SMALL caused a letter of indebtedness to be mailed to Martha Van Sickle acknowledging a loan of $200,000 to Caucus and setting forth a schedule of repayment.

59. On or about December 20, 1985, defendant SMALL caused a letter of indebtedness to be mailed to Martha Van Sickle acknowledging a loan of $50,000 to Caucus.

60. On or about February 20, 1986, when Audrey Carter called to inquire about interest payments which had not been received, BILLINGTON stated: "Oh, yeah, absolutely, that's not a problem, it's never been a problem, and nobody who's run operations against us has ever even tried to imply that our loans are not good."

61. In or about early April, 1986, LAROUCHE hosted a dinner at his residence in Leesburg, Virginia, attended by Goodwill Post.

62. In or about early April, 1986, defendant SMALL solicited a loan from Goodwill Post which he said was to be used for publishing "Dope, Inc."

63. In or about early April, 1986, after meeting with Goodwill Post in his office, SMALL stated: "She can do it. She can do at least 20. She's bullshitting. Did you see that hit about how good-looking and smart she was when she was young? She thinks she's real clever. 'No more savings.' Fuck that bullshit."

64. On or about April 18, 1986, SMALL caused a letter of indebtedness to be mailed to Goodwill Post acknowledging her loan of $15,000 to Caucus.

65. In or about April, 1986, GREENBERG had telephone conversations with Max A. Harrell and solicited a

loan. GREENBERG represented that money loaned to Caucus would be repaid in eight months, with interest.

66. On or about April 23, 1986, GREENBERG caused a letter of indebtedness to be mailed to Max A. Harrell acknowledging his loan of $10,000.

67. On or about May 20, 1986, defendant EDWARD SPANNAUS caused a letter to be sent to all TLC contributors containing the statement that, as of October, 1984, TLC had been attempting to raise money to repay debts. The letter further asked lenders to forgive or extend their loans.

68. On or about June 14, 1986, at an NEC meeting in Leesburg, Virginia, defendant LAROUCHE stated: "Can't maintain organization without money. Can't spend out of every hole in sight without getting it in. Not facing gossip around finances. Everybody's sensitive around the finances, whether you give them a check or not. . . . Don't make any statement on cost accounting till you check with me. Don't criticize me. Cut costs not publications, legal and security, period! From there on, we scratch."

69. On or about July 5, 1986, defendant LAROUCHE wrote and mailed a letter to Elizabeth Sexton, in response to her complaints about unrepaid loans, which contained the following false, fictitious and fraudulent statements:

a. That defendant LAROUCHE had "no . . . executive authority over the affairs of Caucus Distributors, Inc";

b. That "any non-performance in loan-repayment has been solely the result of wicked operations by adversaries of CDI, with no discretionary nonperformance by CDI itself; there is no question, but that the loans would have been repaid in a timely fashion, but for the activities of my enemies."

70. On or about August 4, 1986, defendant SPANNAUS approved new loan acquisition policies and a new form for letters of indebtedness.

(In violation of Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH TWELVE

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegation of paragraphs one through thirty-one, and Overt Acts one through seventy of Count One are hereby realleged and incorporated by reference as though set forth in full.

2. From in or about January, 1984 to in or about April 19, 1987, in the Eastern District of Virginia and elsewhere, the defendants LAROUCHE, WERTZ, SPANNAUS, BILLINGTON, SMALL, GREENBERG and RUBINSTEIN, devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, as detailed in paragraphs one through thirty-one and Overt Acts one through seventy of Count One of this indictment.

3. On or about the dates set forth below, in the Eastern District of Virginia and elsewhere, the defendants, as particularized below, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in paragraph 2, above, knowingly placed and caused to be placed the following items in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service to the address listed below, according to the directions thereon, each such mailing being a separate count:

Ct.	Approx. Date of Mailing	Defendants Charged	Addressee	Item Mailed
2	6-9-85	LAROUCHE WERTZ BILLINGTON	Dorothy Powers 703 E. Henry St. Mt. Pleasant, Iowa	Unsecured Promissory Note agreeing to pay $30,000
3	8-19-85	LAROUCHE WERTZ SPANNAUS SMALL	Mr. Clifford L. Rither P.O. Box 1218 Richland, WA	Letter of Indebtedness Re: $10,000 Loan
4	8-28-85	LAROUCHE WERTZ SPANNAUS BILLINGTON	Lita Witt 2426 W 10th St Dallas, TX	Letter of Indebtedness Re: $5,000 Loan
5	11-12-85	LAROUCHE WERTZ SPANNAUS BILLINGTON	Mrs. Audrey Carter 738 S.R. 518 Box 130 Newport Richey, Fl	Letter of Indebtedness Re: $10,000 loan
6	11-18-85	LAROUCHE WERTZ SPANNAUS RUBINSTEIN	Elizabeth A. Sexton 60 Suffield Meadows Dr. Suffield, CT	Letter of Indebtedness Re: $4,000 Loan
7	12-4-85	LAROUCHE WERTZ SPANNAUS RUBINSTEIN	Cecilia A. Landegger 28 Grove Lane Bronxville, NY	Letter of Indebtedness Re: $10,000 loan
8	12-20-85	LAROUCHE WERTZ SPANNAUS SMALL	Martha R. Van Sickle 6038 Allisonville Road Indianapolis, IN	Letter of Indebtedness Re: 200,000 loan
9	1-6-86	LAROUCHE WERTZ SPANNAUS GREENBERG	Gerry Corbin 4240 Park Newport Newport Beach, CA	Letter of Indebtedness Re: $10,000 loan
10	4-18-86	LAROUCHE WERTZ SPANNAUS SMALL	Goodwill Post 1 Oak Court Candler, NC	Letter of Indebtedness Re: 5,000 loan
11	4-23-86	LAROUCHE WERTZ SPANNAUS GREENBERG	Max A. Harrell 602 Spring Dr. Pasadena, TX	Letter of Indebtedness Re: 10,000 loan
12	7-5-85	LAROUCHE	Mrs. Thomas S. Sexton 60 Suffield Meadows Dr. Suffield, CT	Letter

(In violation of Title 18, United States Code, Sections 2 and 1341.)

COUNT THIRTEEN

THE GRAND JURY FURTHER CHARGES THAT:

INTRODUCTION

1. The allegations of paragraphs 1 through 10 and 31 of Count One are realleged and incorporated as though set forth in full.

2. In addition to the NCLC related entities described in paragraph six of Count One, other entities were established for the purpose of purchasing and holding assets and real estate for the benefit of defendant LYNDON H. LAROUCHE. Those entities include:

a. The Leesburg Security Fund, a charitable trust established in 1986 for purchasing real estate on which to house LAROUCHE.

b. The Loudoun County Land Trust, an unincorporated association established in 1988 for the purpose of keeping control over real estate on which LAROUCHE's residence was located.

OBJECT OF THE CONSPIRACY

Beginning in or about 1979, and continuing until the time of this indictment, within the Eastern District of Virginia and elsewhere, LYNDON H. LAROUCHE, JR., knowingly and willfully combined, conspired and agreed with others known and unknown to the grand jury, to defraud the United States by impeding, impairing, obstructing and defeating the lawful function of the United States Treasury Department, Internal Revenue Service, in the ascertainment, computation, assessment and collection of the revenue, to wit: the individual income taxes of LYNDON H. LAROUCHE, JR.

MEANS AND METHODS OF THE CONSPIRACY

1. The said unlawful combination, conspiracy, confederation and agreement was to be and was accomplished by the

following means and methods and in the following manner, each of which was a part of the conspiracy.

2. It was a part of this conspiracy that the defendant LAROUCHE, together with individual NCLC members and related corporate entities, both known and unknown to the Grand Jury, combined, conspired and agreed to compensate the defendant LAROUCHE for the services, leadership, advice and assistance he provided to the organization by paying indirectly all costs of maintaining LAROUCHE's lifestyle, in whatever manner he desired, rather than paying him a salary, royalties, commissions or other traditional forms of compensation.

3. It was further a part of this conspiracy that the following costs of housing and maintaining LYNDON H. LAROUCHE, JR. were paid out of bank accounts in the names of corporate and unincorporated entities associated with the NCLC: mortgage payments; rental payments; improvements to residences; maintenance; food.

4. It was further a part of the conspiracy that the following expenses of LYNDON H. LAROUCHE, JR., were paid out of checking accounts and credit card accounts in the names of individual members of the NCLC, and later reimbursed out of organization funds: travel, entertainment, clothing, gifts to others, wine, furniture and books.

5. It was further a part of this conspiracy that payments made on behalf of LAROUCHE were commingled with various other expenses, without an adequate and complete record being maintained of which payments went to LAROUCHE's benefit.

6. It was further a part of this conspiracy that the defendant and his co-conspirators treated all payments made on LAROUCHE's behalf as corporate "security", "editorial" and "advisory" expenses.

7. It was further a part of this conspiracy that the corporate entities which paid expenses on behalf of LAROUCHE failed to issue to him and failed to supply to the Internal Revenue Service Forms W-2 or 1099 setting forth the wages and other compensation paid to LAROUCHE.

8. It was further a part of this conspiracy that the defendant and his co-conspirators did characterize and attempt to characterize clearly personal, noncorporate expenditures made on LAROUCHE's behalf as gifts.

9. It was further a part of this conspiracy that the defendant LYNDON H. LAROUCHE, JR., failed to file individual income tax returns for all years during the course of the conspiracy.

10. It was further a part of this conspiracy that the defendant LYNDON H. LAROUCHE, JR., made false and misleading statements in response to questions about his income and tax status.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendant LAROUCHE and his co-conspirators, committed and caused to be committed, the following Overt Acts in the Eastern District of Virginia and elsewhere:

1. In or about October through December, 1979, Citizens for LaRouche, the 1980 campaign committee, paid $3,926 rent for LYNDON LAROUCHE's residence in New Hampshire.

2. In or about December, 1979, and January, 1980, $6,000 in royalty checks were written to the defendant LAROUCHE on an account of New Benjamin Franklin House Publishing Co. (NBFH).

3. In or about January, 1980, and continuously thereafter, the defendant LAROUCHE failed to cash or otherwise negotiate the royalty checks written to him by NBFH.

4. In or about January through November, 1980, Citizens for LaRouche paid $3,718 in rent and damage payments on LAROUCHE's New Hampshire residence.

5. On or about April 15, 1980, David Heller filed an Extension of Time to file defendant LAROUCHE's 1979 tax return, stating that LAROUCHE's 1979 tax liability was $250.

6. On or about November 24, 1980, defendant LAROUCHE signed a 1979 Individual Income Tax Return showing that he had received $7,963 in taxable income, consisting of $6,000 in royalties from NBFH and $1,963 in "living accomodations provided by others," and a total tax due for the year of $707.

7. On or about November 24, 1980, and continuing thereafter until the date of this indictment, defendant LAROUCHE failed to file an individual income tax return for the calendar year 1979.

8. On or about December 22, 1980, Marielle Kronberg wrote a check for $4,600 on the checking account of NBFH for one-half the deposit on an apartment at 315 West 57th Street.

9. On or about January 5, 1981, New Benjamin Franklin House Publishing Co. leased apartments 20D and 21-C, 315 West 57th Street, New York, New York, for the use of defendant LAROUCHE as a personal residence.

10. On or about January 12, 1981, Marielle Kronberg wrote a check on an account of NBFH in the amount of $2,550 for two weeks rent on the apartment at 315 West 57th Street.

11. On or about April 13, 1981, Richard Welsh filed an extension of time for filing defendant LAROUCHE's 1980 Individual Income Tax Return stating that LAROUCHE had a tax due of $250.

12. On or about October, 1981, and continuously thereafter, the defendant LAROUCHE failed to file an income tax return for the calendar year 1980.

13. In or about December, 1981, Richard Welsh hired C.P.A. Murray Altman to prepare tax returns for the defendant LAROUCHE for the calendar years 1978, 1979, and 1980.

14. On or about April 15, 1982, the defendant LAROUCHE failed to file an Individual Income Tax Return for the calendar year 1981.

15. In or about December 1982, Welsh hired C.P.A. Murray Altman to prepare tax returns for the defendant LAROUCHE for the calendar years 1978, 1979, 1980 and 1981.

16. On or about April 15, 1983, the defendant LAROUCHE failed to file an individual income tax return for the calendar year 1982.

17. In or about April, 1983, defendant LAROUCHE travelled to Leesburg, Virginia, and visited Woodburn Farm.

18. On or about April 27, 1983 Campaigner Publications, Inc., with Edward Spannaus signing as its President, executed a three-year lease for the Woodburn Farm.

19. On or about July 15, 1983, Kathy Stevens wrote a check in the amount of $4,600 to King and Cornwall, Inc., the realtors handling the lease of Woodburn Farm.

20. In or about July through October, 1983, Dana (Sloan) Scanlon purchased $13,567 worth of furnishings for the Woodburn Farm.

21. In or about September, 1983, Richard Magraw opened a checking account in his own name at Farmers and Merchants Bank in Leesburg, Virginia, for the purpose of paying expenses of defendant LAROUCHE, among others, when LAROUCHE was in Virginia.

22. On or about December 24, 1983, Dana (Sloan) Scanlon purchased a winter parka for LYNDON LAROUCHE with a $141.41 check written on her personal checking account.

23. On or about December 24, 1983, Dana (Sloan) Scanlon purchased a winter parka for Helga LaRouche with a $158.84 check written on her personal checking account.

24. On or about May 24, 1984, defendant LAROUCHE made the following statements under oath:

Q. Do you pay the rent at Woodburn Farm?

A. I, personally? I personally do not pay the rent at Woodburn Farm.

Q. Does Helga LaRouche pay the rent at Woodburn Farm?

A. I do not believe so.

Q. Do you know if anyone pays the rent?

A. I assume someone does.

Q. Who do you assume pays it?

A. I don't know.

Q. Where does the money come from?

A. What do you mean?

Q. Where does the money come from which pays for your stay at Woodburn Farm?

A. Obviously I don't know, do I?

Q. Did you eat dinner last night?

A. Yes.

Q. Where did you eat?

A. At the house.

Q. Was there food in the house?

A. Yes.

Q. Did you buy it?

A. No.

Q. Did Helga LaRouch buy it?

A. Not to my knowledge.

Q. Who bought it?

A. I don't know.

Q. With what money?

A. I don't know.

Q. How do you take care of daily living expenses, Mr. LaRouche?

A. I don't know.

Q. Do you live free?

A. I don't know.

25. On or about June 2, 1984, Welsh authored a memorandum entitled "Catch-up Tasks Remaining" which set forth accounting tasks to be performed, including adjusting the Profit and Loss accounts of various corporate entities to treat payments made for the support of LAROUCHE as gifts, rather than deductible expenses.

26. On or about June 23, 1984, Edward Spannaus, signing as "Trustee," executed a purchase contract with Charles E. and Anita H. Eckles for a 175.4 acre property in Loudoun County, Virginia, at a price of $1,100,000 to be used as a residence for LAROUCHE.

27. On or about June 26, 1084 Campaigner wrote a $50,000 check as a deposit for the purchase of the Eckles property.

28. In or about the Fall, 1984, Publication Equities, Inc. contracted with David Anderson to buy the Eckles property for PEI.

29. On or about October 30, 1984, defendant LAROUCHE made the following statements under oath:

Q. Who paid for the suit you're wearing Mr. LaRouche?

A. I don't know Mr. Kavaler.

Q. You just found it in your closet, did you?

A. No, it was a gift by persons associated with me some years ago.

Q. Are the other suits in your closet ones that you went out to a store and bought?

A. I have on no occasion gone out to a store and bought any articles of more than a hair cut, a $5 price, in the past 10 years.

Q. Do you know who pays for all those suits in your closet?

A. I do not Mr. Kavaler. I do not know in detail. I have some general idea that they are gifts from people associated with me or other.

Q. I see. Who pays for your food Mr. LaRouche?

A. The same Mr. Kavaler.

Q. You don't know who pays for your food?

A. I know in general, I do not know in detail.

30. On or about November 27, 1984, Kathy Stevens wrote a $2,000 check for one month's rent on the Woodburn Farm on a checking account of PGM, Inc.

31. On or about December 22, 1984, Welsh performed a series of computations to determine the effect on the tax liability of Campaigner Publications, Caucus Distributors and Executive Intelligence Review Research, Inc./New Solidarity International Press Service, Inc., for the calendar years 1981 through 1983 if payments made by those organizations on behalf of LAROUCHE were treated by those corporations as nondeductible gifts.

32. On or about January 9, 1985, a deed was executed transferring title of the Eckles property to David Anderson.

33. On or about February 1, 1985, Publication Equities, Inc., wrote a check for $125,000 as part of the downpayment on the Eckles property.

34. On or about February 1, 1985, Campaigner wrote a check for $4,000 as part of the downpayment on the Eckles property.

35. On or about February 11, 1985, Caucus wrote a check for $11,500 as part of the downpayment on the Eckles property.

36. On or about February 11, 1985, Publications and General Management wrote a check in the amount of $4,500 as part of the downpayment on the Eckles property.

37. On or about April 2, 1985, PGM paid $9,750 rent to David Anderson.

38. On or about August 14, 1985, Richard Magraw charged a $39.00 pair of cufflinks for LYNDON LAROUCHE on Magraw's Visa card.

39. On or about August 24, 1985, Richard Magraw charged a $20.79 pair of shoes for Helga LaRouche on his Visa card.

40. On or about August 25, 1985, Richard Magraw charged $75.00 worth of film for Helga Larouche on his Visa card.

41. On or after September 24, 1985, Kathy Magraw recorded the charges referred to above in Overt Acts 38 through 40 as "Advisory Expenses" of Campaigner.

42. In or about mid-October, 1985, a form requesting authorization to spend $1,320 worth of Campaigner funds on silver and china, the purpose of which originally was typed on the form to read "LaRouche Entertaining" was altered to read "VIP Entertaining."

43. In or about mid-October, 1985, a form requesting authorization to spend $496 worth of Campaigner funds on

glassware, plates and similar items, the purpose of which was originally typed to read "LaRouche Entertaining" was altered to read "VIP Entertaining."

44. In or about December, 1985, Richard Magraw purchased $329.18 worth of jewelry with funds from a checking account in his own name for LYNDON LAROUCHE to give to his wife Helga as a present.

45. On or about March 1, 1986, Richard Magraw purchased $129.50 worth of clothing for LYNDON LAROUCHE with his VISA card.

46. On or about March 28, 1986, Kathy Magraw recorded the clothing purchased for LAROUCHE, referred to above in Overt Act 45, as an "Advisory Expense" of Campaigner.

47. On or about April 19, 1986, Kathy Stevens recorded LYNDON LAROUCHE's present to his wife Helga, referred to above in Overt Act No. 44 as an "Advisory Expense" of Campaigner.

48. On or about September 22, 1986, the ICLC morning briefing, under the heading "NEC Memo" announced the creation of the "Leesburg Security Fund" for the purpose of raising money to buy "Ibykus Farm" so that "we can maintain the farm as a secure facility for Lyndon and Helga LaRouche and other guests and dignitaries"

49. On or about October 2, 1986, the Leesburg Security Fund paid $300,000 to the Estate of Anita H. Eckles for the purchase of Ibykus Farm.

50. On or about May 17, 1988, the Loudoun County Land Trust was established for the purpose of holding title to real estate.

51. On or about May 25, 1988, legal title to Ibykus Farm was transferred from David Anderson to the Loudoun County Land Trust.

(In violation of Title 18, United States Code, Section 371.)

A TRUE BILL.

_____

FOREPERSON

_____

HENRY E. HUDSON
UNITED STATES ATTORNEY

_____

Kent S. Robinson
Assistant United States Attorney

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	CRIMINAL NO.
LYNDON R. LAROUCHE, JR. et al.,	)	88-243-A
	)	
	)	
Defendant.	)	

ORDER

Upon consideration whereof, the court makes the following rulings on the defendants' motions submitted and heard this day:

A. As to the motions filed jointly by all defendants, it is hereby ORDERED that:

1. The motion for disclosure of exculpatory information is denied. For the reasons set out in the decision on the government's motion in limine, the discovery matters concerning the infiltration, harassment and financial warfare are irrelevant to the charges contained in the indictment, nor is the belief that the government was "out to get them." The discovery already provided the defendants by the government is more than adequate.

2. The motion to dismiss filed by the defendants Lyndon LaRouche, Edward Spannaus and Michael Billington on the basis of speedy trial and due process violations is denied. The basis of the motion is that the prosecution here is the same as that in Boston, and that consequently the time limits of the Speedy Trial Act and for purposes of due process began to run with the institution of the Massachusetts proceeding. The court does not agree that the charges are the same.

3. The motion to dismiss for violation of the Fifth Amendment right to an independent and informed grand jury is denied. There is no obligation on the part of the government to present exculpatory evidence to the grand jury, nor is the court persuaded that the publicity engendered by some of the defendants' activities can be deemed to have pressured the grand jury into returning an indictment.

4. The motion to dismiss on the grounds of selective prosecution is denied. Not only are there no others similarly situated to the defendants, but the history of this case, including the search warrants, affidavits filed in support of the search warrants and the instances of the finding of the probable cause of criminal activity, negate any suggestion that the prosecution is for other than a legitimate purpose.

5. The motion in limine respecting attorney-client privilege and work product privilege is denied, as is the request for an in camera review of the documents in question. The only documents which the government intends to use are those described in a grand jury subpoena voluntarily complied with. No objection was interposed, although apparently counsel had been advised of the contemplated production. It is too late to now object to the use of these few documents.

6. The motion of the defendants to invoke the doctrine of judicial estoppel is denied. The government has taken no position with regard to the defendants "belief" that they were being harassed or subjected to financial warfare which is inconsistent with any position that they will take in the proceeding, given the court's ruling on the relevance of that belief.

7. The motion of the defendants for disclosure of Rule 404(b) evidence is denied. There is no obligation on the government to provide the defendants with notice of intention to prove prior or subsequent bad acts or criminal conduct.

8. The motion of the defendants for a bill of particulars is denied. The indictment is more than adequate to enable the defendants to mount their defense, to be apprised of the charges against them, and to be able to plead double jeopardy should they be re-indicted. The court will require no more.

9. The motions of the defendants for individual voir dire of the jurors and to submit a questionnaire to the jury panel are denied. The court's questioning of the panel can adequately insure an impartial panel, and the court will, of course, consider any specific questions submitted in a timely manner by counsel which counsel desire to have the court ask.

10. The motion of the defendants for discovery is denied. The court concludes that the defendants have been furnished all the discovery required under F. R. Crim. P. 16. The court will order no more.

11. The motion of the defendants for suppression after a hearing pursuant to *Franks* v. *Delaware,* 438 U.S. 154 (1978), is denied. While the only issued addressed by Judge Keeton in the Massachusetts proceeding which is the subject of this motion, were relative to the reliability of Emerson, the court finds Judge Keeton's disposition of that matter persuasive, although, of course, it is not binding on the defendants in this case, particularly those defendants who are not defendants in Massachusetts. As to the other matters involved in this motion, namely, the Schiller Institute, the NSIPS, and the personnel member profiles, the court finds that, when read as a whole, the statements alleged to be untrue are not so material that without them, the affidavit would be insufficient to establish probable cause. In addition, there has not been the substantial

preliminary showing required by *Franks* that the statements, even if false, were made knowingly and intentionally or with disregard for the truth. Such a preliminary showing is necessary before any evidentiary hearing is justified.

12. The motion of the defendants to suppress and for a hearing under *United States* v. *Heldt,* 668 F.2d 1238 (D.C. Cir. 1981), is denied. Judge Keeton discussed this issue thoroughly and persuasively. In addition to that, Judge Penn, although discussing only the Virginia warrants and their execution, in a hearing before him pursuant to *Heldt,* found no violations occurred of constitutional dimension. These negate the attempted threshold showing required to be made before any evidentiary hearing is held.

13. The motion of the defendants to suppress evidence seized by the government during the search conducted on October 6 and 7, 1986, on the basis of the facial insufficiency of the search warrants and supporting affidavits is denied. Again, the court finds Judge Keeton's opinion persuasive, even assuming all these defendants have standing to make the assertion.

B. As to the motions filed by the defendant LaRouche, individually, it is ORDERED that:

1. The motion to suppress the computer tapes authored and encoded by him which were seized on October 6 and 7, 1986, is denied. The court finds, first of all, the defendant lacks standing to bring the motion inasmuch as he had no legitimate expectation of privacy in premises in which he had no office, no desk and no file cabinets belonging only to him. *United States* v. *Horowitz,* 806 F.2d 1222 (4th Cir. 1986). In addition, the warrant pursuant to which the searches were conducted clearly included the items sought to be suppressed by this motion.

2. The motion of this defendant for a bill of particulars is denied for the same reason the joint motion for a bill of particulars was denied.

C. As to the motions of defendants LaRouche and Small for discovery, it is hereby

ORDERED that the motion is denied, the court finding that the government has furnished all that is required by F. R. Crim. P. 16, and the court will order no more.

D. As to the motions of the defendant Billington, it is hereby ORDERED that:

1. The motion of this defendant to suppress cassette tapes and other evidence seized is denied. The tapes marked "Audrey Carter" consist of two tapes which were found together, on one of which was the language "agreement to rollover." These come within the warrant and its supporting affidavit calling for the seizure of all financial records. The other documents generally referred to by this motion are insufficiently identified to enable the court either to identify them or to conclude that they are covered by a privilege.

2. The motion of this defendant to dismiss Count I on the ground that the charge is covered by state and federal charges and violated the defendant's right to due process because of the multiple prosecution is denied. In the court's view, the instant indictment is not the same as the other federal indictments.

E. As to the defendant Spannaus, it is hereby ORDERED that:

1. The motion of this defendant to suppress notebooks seized on the ground that they are outside the scope of the search warrant is denied. This has been litigated before this court, resulting in a ruling on November 21, 1986, and before the United States District Court for the District of Massachusetts, resulting in a ruling of October 5, 1987. It has been rejected both times and the court is not persuaded that it should not be rejected again.

2. The motion to suppress the notebooks of Nancy Spannaus is denied. The disclaimer of the government in its response, as well as its disclaimer in open court, makes this motion moot.

F. Insofar as the motion in limine of the United States and the related Notice of the defendants pursuant to § 5 of the Classified Information Procedures Act (CIPA), it is

ORDERED that the motion in limine of the United States is granted to the following extent only:

1. Reference to bankruptcy proceedings as a reason for non-payment of the loans which are the subject of the indictment will be permitted; that the bankruptcy was an involuntary one, i.e., at the instance of other creditors, will be admissible; that the government was the creditor which initiated the involuntary bankruptcy proceeding will not be admitted because the court, pursuant to F. R. Evid. 403, concludes that admission of testimony that United States was the petitioning creditor would necessitate inquiry into the nature of the debts owed the United States as a result of contempt proceedings, and would divert the jury from the issues raised by the indictment.

2. Evidence as to other FBI or law enforcement activities, use of informants (other than possible impeachment should the informant testify), FBI infiltration, intelligence or security activities directed at the finances and political activities of persons and organizations associated with LaRouche will not be admitted, except that the defendants may show that there were unexpected actions by some outside influence, including the government, which had the effect of frustrating their expectation that repayment would be made. Even when the court will not allow a delving into any details of alleged infiltration, financial warfare, etc., for the reason that under F. R. Evid. 403, this would divert the jury from the issues raised in the indictment.

For those same reasons, the notice under § 5 of CIPA is insufficient to invoke the further procedures outlined in that Act.

In connection with the motion in limine, the court recognizes that circumstances may develop at trial which renders admissible evidence which at this point does not appear to be so; consequently, this ruling is not written in stone, although counsel are admonished not to mention the matters covered in this ruling in their opening statement.

/s/ A. V. B. Jr.
United States District Judge

Alexandria, Virginia
November 10th, 1988

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYNDON H. LAROUCHE JR., EDWARD SPANNAUS, ELIJAH BOYD JR., DANIEL SNEIDER, ALAN SALISBURY, KHUSHRO GHANDI, ANITA GRETZ GALLAGHER, ANTON CHAITKIN, IRA LIEBOWITZ, NANCY BRADEEN SPANNAUS, MARIA SPIDA, MICHAEL R. MICHALESON, CRAIG SCHULTZ, GAIL GOERNER KAY, THE UNITED STATES LABOR PARTY and THE NATIONAL CAUCUS OF LABOR COMMITTEES,		75 Civ. 6010 (MJL)
Plaintiffs,	:	SECOND AMENDED COMPLAINT
vs.	:	
WILLIAM H. WEBSTER, WILLIAM FRENCH SMITH, and the FEDERAL BUREAU OF INVESTIGATION,	:	
Defendants.	:	

Plaintiffs, by their undersigned counsel, for their complaint against defendants allege as follows:

PRELIMINARY STATEMENT

1. This is an action for a declaratory judgment and permanent injunctive relief. Plaintiffs seek a declaratory judgment holding that an FBI investigation conducted of plaintiffs National Caucus of Labor Committees and the U.S. Labor Party and of the individual plaintiffs because of their membership in these organizations was conducted in bad faith, was *ultra vires* and violated the First Amendment rights of all plaintiffs and rights guaranteed under the Fourth, Fifth and Ninth Amendments to the U.S. Constitution. The FBI's illegal actions

occurred under color of the Internal Security laws of the United States and other laws of the United States.

2. Plaintiffs also seek a permanent injunction at the trial of this action against specific unlawful investigative techniques and actions employed by the FBI against them and a permanent injunction against dissemination by the FBI of the files concerning plaintiffs accumulated by the FBI in the course of its illegal investigation of plaintiffs. Plaintiffs additionally ask this Court to exercise its equitable powers to remedy the damage already done by widespread FBI dissemination of false and defamatory characterizations and information concerning plaintiffs. These disseminations have caused plaintiffs irreparable harm and continue to cause plaintiffs irreparable harm for which there is no adequate legal remedy.

3. Plaintiffs also seek a mandatory injunction ordering release to plaintiffs of files concerning them and information contained in those files which are being unlawfully withheld from release by the defendants under the provisions of the Freedom of Information Act and the Privacy Act.

JURISDICTION

4. This action arises under the First, Fourth, Fifth and Ninth Amendments to the United States Constitution, the Freedom of Information Act (5 U.S.C. 552, as amended) and the Privacy Act (5 U.S.C. 552a). This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1331, 28 U.S.C. 2201 and 2202, 5 U.S.C. 552(a)(4), 5 U.S.C. 552a(e)(7), 5 U.S.C. 552a(g)(1), and 28 U.S.C. 1361. Venue is proper in the Southern District of New York since this is the District in which plaintiffs' claim arose and defendants are an agency of the United States and employees of the United States sued in their official capacities. 28 U.S.C. 1391(b) and 28 U.S.C. 1391(e).

PARTIES

5. Plaintiffs Edward Spannaus, Elijah Boyd, Jr., Daniel Sneider, Alan Salisbury, Khushro Ghandi, Anita Gretz Gallagher, Anton Chaitkin, Ira Leibowitz, Nancy Bradeen Spannaus, Maria Spida, Michael R. Michaelson, Craig Schultz, and Gail Goerner Kay are or were members of the U.S. Labor Party and the National Caucus of Labor Committees who were targets of FBI investigation solely upon the basis of their membership in the NCLC and the U.S. Labor Party and their political activities. All of the plaintiffs except for Michael R. Michaelson and Craig Schultz reside in New York, New York. Michaelson resides in Denver, Colorado and Schultz resides in Portland, Oregon.

6. Plaintiff Lyndon H. LaRouche, Jr. founded the National Caucus of Labor Committees and the U.S. Labor Party, as an internationally recognized author and economist and was a candidate for the Democratic nomination for President of the United States in 1980.

7. Plaintiff National Caucus Of Labor Committees is an unincorporated political association with principal offices in New York, New York. The National Caucus Labor Committees ("NCLC") is the U.S. branch of the International Caucus Of Labor Committees ("ICLC") which is a political association functioning in the United States, Western Europe, Mexico, Canada, Colombia and India, principally. The nature and activities of these organizations at all times material to this complaint is fully set forth below.

8. Plaintiff U.S. Labor Party was a political party founded by members of the NCLC which functioned actively throughout the United States in campaigns by its candidates for public office and in programmatic campaigns on behalf of its political policies from 1973 through 1979. In 1979, many of the leading members of the U. S. Labor Party joined the Democratic Party. The U.S. Labor Party became defunct as an active political organization at that point. Its members remain in active political association advocating many political and programmatic goals which were advocated as aspects of the U.S. Labor Party platform. At all

times material to this complaint the principal offices of the U.S. Labor Party were located at New York, New York.

9. The Federal Bureau Of Investigation ("FBI") is an agency of the United States Department of Justice charged with responsibility for investigation and arrest of persons violating the laws of the United States. The FBI has its headquarters in Washington, D.C. and maintains offices and agents throughout the United States and in some foreign countries.

10. Defendant William H. Webster is the present director of the FBI and resides in Washington, D.C. He is sued in his official capacity only for the purposes of the declaratory and injunctive relief prayed for in this complaint.

11. Defendant William French Smith is the present Attorney General of the United States and the officer of the United States supervising all activities of the U.S. Department of Justice. He is sued in his official capacity only for the purposes of the declaratory and injunctive relief prayed for in this complaint. Defendant Smith resides in Washington, D.C.

FIRST CAUSE OF ACTION
FACTUAL RECITATION

12. In or about 1968, the FBI began an investigation of the predecessor organization to plaintiff NCLC, the SDS Labor Committee.

13. From this date forward, all actions by the FBI against the individual plaintiffs and against individuals associated with the NCLC were based upon the political activities of the NCLC and the affiliation of individuals with the NCLC and not upon the actions of the individuals.

14. The bad faith and *ultra vires* actions of the FBI and its agents and employees against the NCLC, the U.S. Labor Party and their members, which are fully set forth below, were conducted under color of law including 18 U.S.C. 2383, 2384, 2385, and 2101 and 50 U.S.C. 781-798 (hereinafter collectively referred to as "Internal Security Laws") and other laws of the United States.

15. At no time since its inception has the NCLC advocated the violent overthrow of the government of the United States, advocated violence as a methodology for resolving its disagreements with policies of the Government of the United States or engaged in activities which in any fashion might be constitutionally cognized by the Internal Security Laws. Similarly, the NCLC has violated no other laws of the United States.

16. Initial recruits to the NCLC were associated with the student movement of the 1960's. The NCLC was founded by plaintiff LaRouche on the basis of a series of economics courses on university campuses over the period 1968-1972. In these courses LaRouche argued that the monetary and economic policies employed by advanced sector nations were leading to a deepening monetary crisis. The continued application of these monetary and economic policies, according to LaRouche, would spawn the type of fascist economic and social systems historically associated with Hjalmar Schacht and Albert Speer.

17. The NCLC was originally a faction of the Students for a Democratic Society. The Labor Committees broke with that grouping during 1968 in opposition to the violent tactics proposed by Mark Rudd and other individuals associated with the formation of anarchist and terrorist gangs such as the Weathermen. In that year the Labor Committees also supported the United Federation of Teachers in that union's New York City strike action. This support by the NCLC earned the organization the universal approbation of every organization which at that point constituted the student left.

18. In 1971 the NCLC began a constant political action and education campaign which has been elaborated in a variety of programmatic approaches to national and international strategic issues but has always centered upon essential themes developed from studies of political economy and the history of major advances in man's knowledge of the universe.

19. Since 1971 the NCLC has lawfully and effectively campaigned against organizations and individuals propounding philosophical anarchism of the types associated with radical left and radical right political formations, monetary and economic

policies consistent with those of Schacht and Albert Speer and anti-technology policies including environmentalism and neo-Malthusianism. The NCLC's campaigns have been most emphatic against the genocidal effects of such neo-Malthusian policies imposed by the World Bank and IMF on the Third World in the form of "population policies" and strangulation of economic development. The NCLC associates such policies with a faction of international financiers whose goal is the devolution of advanced sovereign republican nation-states into a system of feudal post-industrial societies.

20. The NCLC's programs call for national and international monetary reforms centered on promotion of global industrial expansion and the use of modern technology in developing nations to develop the productive powers of labor of those nations. These development policies would revive the dying industrial economies and scientific traditions of the advanced sector by the required exports and breakthroughs required for third world development. A corollary result of the NCLC's specific monetary reform proposals would be the bankruptcy of the financial interests who have staked their economic interests and political power on contrary policies.

21. In 1973-74, LaRouche and members of the NCLC established the International Caucus of Labor Committees as a political association functioning in several countries to promote the broad programmatic goals outlined above.

22. Since the inception of the NCLC and ICLC, its members have subsisted economically through the creation and sale of publications and part-time employment outside the organization. The publications include New Solidarity, a bi-weekly newspaper, Campaigner Magazine, a theoretical journal dedicated to studies of the classical tradition in economics, science, philosophy and related fields and Executive Intelligence Review, a weekly news magazine which reviews and analyzes important strategic developments throughout the world.

23. Members of the NCLC have been and are associated with initiating and supporting other organizations which function to present and propagate ideas and issues of serious political

interest. These organizations were also subject to the FBI actions at issue in this lawsuit or, to the extent they came into existence after the FBI ended its "domestic security investigation", suffer the effects of the FBI's action by their public association with the NCLC and plaintiff LaRouche.

24. In 1973 the U.S. Labor Party was founded with the goal of becoming the third major political party in the United States through election campaigns and policy proposals designed to highlight and remedy the nation's ongoing industrial and economic collapse.

24. The Fusion Energy Foundation was initiated by LaRouche in 1973 to promote scientific studies of fusion energy development, advanced nuclear energy development and associated industrialization policies. FEF publishes Fusion Magazine, a mass circulation scientific magazine which campaigns against organizations and policies associated with environmentalism and deindustrialization and publishes news of scientific breakthroughs in the areas of its concerns.

25. In 1978, LaRouche and his associates initiated the National Anti-Drug Coalition. This organization campaigns for drug enforcement policies and legislation centered upon the international criminal elements and financial institutions directly involved in the drug economy and the promotion of drug use. The National Democratic Policy Committee was founded in 1980 as a political action committee within the Democratic Party which campaigns for the economic, scientific and political policies associated with Lyndon LaRouche's 1980 Democratic Presidential campaign.

26. As opposed to other organizations and groups who may have been targets of illegal FBI actions during the past, members of the NCLC remain politically active on behalf of the policies of the organization. They engage, as they engaged during the period at issue in this lawsuit, in daily political campaigns for policies, programs and legislation in states of the United States and in the U.S. Congress. Members of the NCLC have been and are currently candidates for public office. Members of the NCLC present their economic and other policy proposals to government officials and agencies throughout the

world for discussion and implementation. These presentations have and do include discussions with individuals employed professionally in fields which are particularly sensitive to the FBI defamations at issue in this lawsuit such as law enforcement officials, scientists and military officials.

27. From its 1968 inception, the FBI investigation of plaintiffs was not designed to investigate whether or not plaintiffs were in violation of the laws of the United States. Based upon the FBI's political animus toward plaintiffs, the FBI utilized the investigation to implement a systematic course of action designed to destroy the NCLC and the U.S. Labor Party as political organizations.

28. In its Final Report of April 26, 1976, *Intelligence Activities and the Rights of Americans,* the U.S. Senate Select Committee on Intelligence (hereinafter "Church Committee" and "Church Committee Report") documented FBI disruption tactics designed to foment "gang warfare" between groups the FBI considered to be inimical to the national policy interests of the United States. The goal of this program was violence between rival political groups, with the instigation and direction of such violence monitored and controlled by the FBI.

29. The FBI deployed this illegal activity against the NCLC in several instances presently known to plaintiffs.

30. In April, 1969, the FBI authored and mailed out a leaflet intended to "cause disruption" and to "widen" the "split" between the Columbia University SDS chapter and the N.Y. SDS Labor Committee. The leaflet adopted the language and rhetorical devices of Mark Rudd and the Weathermen faction of the SDS to attack and threaten Tony Papert of the SDS Labor Committee. Through its informant coverage and other information available to it the FBI knew that the Rudd faction was violent and that widespread dissemination of such a threat, which would be attributed to Rudd by those reading the leaflet, could lead to violence against the SDS Labor Committee and Papert by Rudd's group and its associates.

31. In September of 1975 Gregory Rose, while functioning as an FBI informant, supplied information to the Communist Party's "Daily World" newspaper for two articles on the NCLC

entitled "Phoney Labor Party Exposed as CIA Front" and "A School for Spies Against Labor Unions."

34. Rose's actions were at the direct instructions of the FBI. The content of the information supplied was designed to provoke attacks by Daily World readers on the NCLC and U.S. Labor Party. Members of the Communist Party and other left wing organizations were encouraged by the FBI to believe through this and similar operations that the NCLC was a right wing proprietary of the CIA or other police grouping. This technique for COINTELPRO disruption was known as the "snitchjacket" technique in the FBI.

35. In 1973, the NCLC was involved in a series of physical altercations with members of the Communist Party U.S.A. The Communist Party initiated attacks against NCLC members in New York and escalated its actions by an attempt to foment racial violence against the NCLC in Philadelphia. Upon information and belief, the FBI, through its informants and agents in the Communist Party, initiated these attacks against the NCLC.

36. The NCLC responded to these assaults by physical confrontations with the Communist Party at Communist Party meetings. Further physical altercations occurred and NCLC members were arrested. Despite FBI monitoring of all events within this short time period in 1973, including the acquittals of NCLC members at trial, the FBI characterized these events as unprovoked NCLC violent assaults against other political groups. Rumors of imminent NCLC attack were spread throughout the radical left and incidents of attack occurred which had nothing to do with the NCLC – the NCLC began and ended physical actions like this with this confrontation with the Communist Party. The FBI spread these rumors and was responsible for other incidents. As a result attacks by radicals and terrorists against the NCLC continued.

37. According the the Final Report of Special Master Charles Breitel in *Socialist Workers Party, et al.* v. *The Attorney General of the United States,* 73 Civ. 3160 (Southern District of N.Y.) ("Breitel Report"):

"In 1973, an informant reported that a letter had been sent to the NCLC, an organization opposed to the SWP and suspected by the SWP of having committed unlawful acts against its members, under the names of the SWP members. The letter listed the names, home telephone numbers and addresses of the SWP members. Unless the Government is prepared to allow disclosure of all information in the corresponding Part III item, it should be conclusively presumed that the letter was sent by the FBI." (Breitel Report, p. 82).

"In 1974, an anonymous caller telephoned the local SWP headquarters and warned that the NCLC planned either to attack or disrupt a forthcoming meeting. Unless the Government is prepared to allow disclosure of all the information in the corresponding deleted Part III item, it should be conclusively presumed that the FBI either made the telephone call or caused it to be made." (Breitel Report, p. 83).

38. In 1974 and 1975 NCLC members were attacked in Portland, Oregon, Seattle, Washington, and Denver, Colorado by members of the October League and Revolutionary Union. Both organizations are violent and terrorist in nature. The FBI knew of these attacks at the planning stage through informant coverage in the RU. The FBI refused any investigation of these attacks upon specific request for investigation by the NCLC. In motivating these attacks, members of the RU and October League stated that NCLC members were CIA agents and police agents. The sole response of the FBI to these attacks was to suggest to plaintiff Craig Schultz when he complained to the FBI of a visit made by FBI agents to an NCLC supporter that the Revolutionary Union and not the FBI had actually visited the supporter.

39. Upon information and belief, the FBI instigated and fomented the attacks by the RU and the October League, both of which were infiltrated by FBI agents and informants, as part of its disruption program against the NCLC.

40. On November 17, 1973 an article appeared in the Black Panther Party newspaper in Oakland, California which insinuated that the NCLC was responsible for the assassination of Oakland school superintendant Marcus Foster, an assassination carried out by the Symbionese Liberation Army. The article characterized the NCLC as a violent "far right white group" similar to the Nazis. This article followed FBI conversations with West Coast informants in the Communist Party concerning precisely this completely false formulation. Upon information and belief, this article was the sole result of FBI activity designed to instigate violence between the NCLC and the Black Panther Party.

41. In 1974 and 1975 the FBI characterized the NCLC as "terrorist" and "like the SLA" in interviews with a landlord and parents of NCLC members. These characterizations were deliberately false. The FBI knew that the NCLC was actively involved in investigating and exposing the SLA in a series of investigative studies throughout the 1973-1974 period.

42. In September of 1973, to the present knowledge of plaintiffs, the FBI began active collaboration with private organizations which were political opponents of the NCLC in mutually agreed upon harrassment, surveillance and political dirty tricks operations against the NCLC and U.S. Labor Party.

43. These organizations included the United Automobile Workers of America (UAW), the Anti-Defamation League of B'Nai B'rith (ADL), the League for Industrial Democracy (LID), the AFL-CIO and the Institute for Industrial Democracy (IAD). These operations were designed to discredit, disrupt, harass and eliminate NCLC influence and organizing campaigns within the trade union movement.

44. On November 20, 1974, the UAW filed a lawsuit against the NCLC, the U.S. Labor Party and related organizations under the rubric of a trademark infringement lawsuit for the use of the name "Solidarity" in the newspaper "New Solidarity" in the Southern District of New York. The lawsuit followed meetings held between representatives of the UAW, the U.S. Department of Justice, the FBI and the Department of Labor concerning possible prosecutorial tactics against the

NCLC. UAW officials stated that the purpose of the lawsuit was to bankrupt the NCLC through the cost of defending the lawsuit while gaining maximum financial disclosures concerning the NCLC through civil discovery.

45. Throughout the period of the lawsuit, the UAW met with the FBI and exchanged materials concerning the NCLC. FBI informant Gregory Rose left the FBI and was to be the UAW's star witness at trial of the action until discovery of this fact led to the disqualification of UAW counsel and the UAW's settlement of the entire litigation.

46. The FBI knew of UAW sponsored attacks against NCLC members at plants throughout the United States and encouraged the UAW in these attacks. The FBI provided the UAW, AFL-CIO, LID, ADL and IAD with derogatory information concerning plaintiffs for publication and dissemination. This information was false and defamatory and centered on allegations of "Communism" and "foreign funding". These organizations, in turn, served as informants for the FBI against the NCLC and infiltrated informants into the NCLC.

47. The relation between the ADL and the FBI established for surrogatic warfare purposes during this period continues to the present date. The ADL has been involved in civil rights violations against NCLC members, financial harrassment and campaigns to bankrupt businesses associated with the NCLC, and the instigation and fomenting of violent attacks against NCLC members through the Jewish Defense League. The "anti-Semitic" defamation employed by the ADL against the NCLC as an explication for these illegal activities originated in ADL and FBI disruption activities against a Fusion Energy Foundation conference in Pittsburgh, Pennsylvania in 1977. Widespread dissemination of this defamation has been particularly targeted against the predominantly Jewish leadership of the NCLC. The FBI is fully apprised and approves of the present ADL activities against the NCLC.

48. In its 1975 report to the House Committee on the Judiciary, *FBI Domestic Intelligence Operations,* ("GAO Report") the General Accounting Office stated that the FBI had

a policy of intrusive visits to relatives, landlords, and employers of FBI domestic security investigation targets and to the targets themselves.

49. These visits served no legitimate investigative purpose but were designed solely to create a situation in which the NCLC target withdrew from the NCLC because of hysteria from his or her family and the financial hardship from visits to employers and landlords by the FBI.

50. In the incidents of visits to relatives or calls to relatives by the FBI presently known to plaintiffs, the FBI told these individuals that the NCLC was violent and possessed guns and bombs. FBI agents insisted that members of the NCLC were about to be arrested or that the U.S. Labor Party member or NCLC member had already committed a federal crime which was known to the FBI. The FBI also stated that the NCLC 'brainwashed' its members and employed them as 'slave labor.'

51. In two instances presently known to plaintiffs wives of U.S. Labor Party members separated from their husbands as the direct result of such an FBI visit. A brother-in-law of a U.S. Labor Party Congressional candidate insisted that he withraw from a Congressional race in Pennsylvania in 1974 because the FBI told him that the candidate had already committed "four offenses" and was about to be arrested by the FBI.

52. U.S. Labor Party supporters and members were monitored and visited by the FBI repeatedly. On the basis of being told that they were now targets of an investigation by the FBI, these individuals withdrew in known instances from all U.S. Labor Party activity. A typical such visit was on June 26, 1974 by FBI agents Kinney and Shue to the Cleveland home of a U.S. Labor Party supporter. The agents demanded detailed information about the NCLC's alleged plans to take over the government of the United States and the United Automobile Workers of America (UAW), about the personal habits of members of the NCLC in Cleveland and about the finances of the NCLC in Cleveland and local sources of support. The agents then stated that the NCLC members known to the supporter were about to be arrested and solicited his aid as an informant.

53. In July of 1974 the parents of an NCLC member, Gail Roeschman, arranged for her kidnapping by Ted Patrick, a person involved in kidnapping and "deprogramming" members of religious cults. The activities of the Roeschmans followed discussions with the FBI concerning the NCLC. When the NCLC requested that the FBI investigate the kidnapping of a member of a political organization, the FBI refused investigation and later asserted that the NCLC was involved in "harassment" of the Roeschmans.

54. As a result of these actions, the NCLC had no further contact with Gail Roeschman. During the same month, July, 1974, an FBI agent was in contact with the mother of an NCLC member in Hartford, Connecticut. The NCLC member was 18 years old. The FBI insisted to the parent that the NCLC was brainwashing her daughter and employing her as slave labor. Upon information and belief, the FBI contact was a direct solicitation of a kidnapping incident similar to the Roeschman incident by the FBI.

55. Throughout 1974 as a result of these and other operations by the FBI, parents of NCLC members were in a constant state of hysteria either about the alleged violent activities of their sons and daughters or the participation of their sons and daughters in a "cult". As a direct result of these activities, the effects of which continue to the present date, the family lives of NCLC members have suffered complete disruption.

56. From 1973 forward, in the incidents presently known to plaintiffs, the FBI regularly visited the employers of NCLC members. As a direct result of such FBI visits, two NCLC members, Rick Davenport and Christopher Douglas lost their jobs in Toledo, Ohio and Reading, Pennsylvania. Upon information and belief, FBI visits to employers with the specific intent of encouraging termination of employment, resulted in discharge of NCLC members in Richmond, Virginia, Detroit, Michigan, and Hartford, Connecticut.

57. The FBI also, in incidents presently known to plaintiffs, vistited landlords of NCLC members for purposes which served no legitimate law enforcement interest. In June of 1974, the FBI informed the Buffalo landlord of an NCLC member that

the tenant was a member of a violent organization. This resulted in termination of the lease. Similar termination of a lease was obtained by such FBI tactics in Perth Amboy, New Jersey in 1975.

58. In July of 1975, the FBI visited the landlord of three NCLC members in Lorain, Ohio. The FBI told the landlord that the NCLC was a terrorist organization like the SLA and requested entrance to the apartment at a time when the NCLC tenant was out of town. The landlord granted this request and the FBI illegally searched the apartment of the NCLC member and his belongings. Inquiries made to a landlord of NCLC members in New York in 1974 requested information concerning which way the windows in his apartment faced. Upon information and belief, this information was requested for the purposes of illegal FBI activities and FBI directed activities involving access to those apartments. Apartments of NCLC members in locations throughout the country in the 10 year period of the FBI's Domestic Security investigation were repeatedly broken into with no items stolen or were vandalized but with no items stolen. Other visits to landlords presently known to plaintiffs were repetitive and designed to secure illegal cooperation with the FBI or termination of leases.

59. In visits to NCLC members themselves, the FBI engaged in provocative or harassment tactics which had no legitimate investigative purpose. On June 4, 1973, FBI agents visited the apartments of three different Labor Committee members in Detroit, Michigan. The FBI attempted to photograph one of the NCLC members. These visits took place after an FBI informant reported to the FBI on June 1, 1973 that previous FBI visits to NCLC members had created panic and hysteria in the Detroit organization. On June 7, 1973, the FBI visited the home of another NCLC member in Detroit to inform him that the Communist Party U.S.A. might escalate its activities against the NCLC and use weapons. Upon information and belief, this visit was part of the FBI disruption program set forth in paragraphs 28-41, *supra.*

60. Informants of the FBI utilized in its Internal Security Investigation of the NCLC, in those incidents known to the

plaintiffs, were also directly employed for the purposes of illegal as opposed to investigative activities.

61. FBI informant Anthony Banks who operated in Newark, New Jersey in 1973 stole a telephone list indicating the telephone numbers of NCLC members and NCLC members in that area from the offices of the NCLC and a U.S. Labor Party electoral nominating petition. These actions were suggested and approved by the FBI.

62. FBI informant George Littlewood, who functioned in that capacity in Boston, Massachusetts against the NCLC in 1974 and 1975 attempted to entrap U.S. Labor Party mayoral candidate Robert Gibbins with stolen goods, offered by Littlewood. Littlewood would follow-up on recent contacts of the NCLC with meetings by Littlewood discouraging them from participating in the NCLC or its activities. After Littlewood was expelled from the NCLC he repeatedly harassed members of the NCLC and sent obscene letters to one woman NCLC organizer. All of these activities were discussed and approved by the FBI.

63. FBI informant William Rini who functioned in that capacity in Cleveland, Ohio during 1974 gave the FBI detailed information as to the locations where the NCLC would be engaged in literature sales and distributions. This information was supplied for the purposes of FBI directed harassment of lawful First Amendment activities by the FBI directly and through local law enforcement authorities.

64. FBI informant Vernon Higgins was deployed in the NCLC Detroit organization in April of 1974 by the FBI. Higgins was formerly an FBI informant in the Ku Klux Klan and played a role in racial incidents, including a school bus bombing in Pontiac, Michigan while serving as an FBI informant. Higgins was an extremely emotionally unstable individual who owned a gun collection and had been involuntarily committed to a mental hospital by his parents.

65. Vernon Higgins activities on behalf of the FBI against the NCLC are the subject of a lawsuit, *Kushro Ghandi et. al. vs. Detroit Police and FBI,* Civ. Action No. 4—72019, Eastern District of Michigan. The lawsuit arose when Higgins admitted

to the NCLC that he was an FBI informant. The FBI and the Detroit Police Department raided the Detroit offices of the NCLC at gunpoint within hours of Higgins' admission. The FBI procured a search warrant from a Judge by falsely stating that Higgins was being held against his will by the NCLC and utilized the occasion, with Higgins already in FBI custody, to terrorize NCLC members and illegally seize information on the premises. Higgins and other FBI informants whose activities are the subject of the *Ghandi* case were involved in illegal FBI and local police harassment of NCLC and U.S. Labor Party First Amendment activities.

66. Vernon Higgins was also encouraged by the FBI to run for office as a U.S. Labor Party candidate. Higgins did not give up his ballot position after the Detroit incidents and this led to widespread dissemination of the fact that an FBI informant was running as a U.S. Labor Party candidate in the public media. Upon information and belief, this dissemination was arranged by the FBI to publicly discredit and damage other U.S. Labor Party candidates.

67. FBI informant Gregory Rose's activities are set forth in paragraph 31, *supra* insofar as they involve the Communist Party U.S.A. During his employment as an FBI informant Rose repeateldy stole documents belonging to the NCLC and its members.

68. In those aspects of Rose's activities presently known to plaintiffs, Rose and the FBI collaborated to formulate false allegations of Soviet espionage activity by the NCLC in addition to joint work with the UAW in the pending trademark lawsuit against the NCLC.

69. FBI documents in the possession of plaintiffs state an FBI evaluation of Gregory Rose as a pathological liar. Despite this evaluation, no remedial action was taken by the FBI to the knowledge of plaintiffs concerning the FBI's widespread dissemination of the allegation that the NCLC was engaged in Soviet espionage activities to various government and other agencies.

70. When his formal employment with the FBI ended, Rose was to be a star surprise witness in the UAW's pending

trademark lawsuit against the NCLC in the Southern District of New York. This plan by the UAW was fully known and agreed upon by the FBI.

71. On March 30, 1979 Gregory Rose authored an article in the National Review which repeats the false espionage charges against the NCLC. The National Review implies that it checked with the FBI concerning Rose's credibility. The article also retails various fabrications by Rose concerning NCLC contacts with the Iraqi government and groups on the far right which were published and disseminated for the purpose of republication and use by the Anti-Defamation League of B'Nai B'rith in its illegal campaign against the NCLC and associated organizations. The Greg Rose U.S. Labor Party article was the cover story for that issue of the National Review. The cover featured the title of the article together with a picture of a Ku Klux Klansman in order to secure maximum pictorial defamation of the U.S. Labor Party and NCLC.

72. Upon information and belief, the March 30, 1979 National Review article was published and prepared with full knowledge and cooperation by the FBI. The content of the article and its placement conform to defamatory techniques employed throughout the FBI's campaign in the public media to defame and discredit the NCLC and U.S. Labor Party and to incite attacks against these organizations by unstable political opponents. In the documented instances of this FBI media campaign, the FBI fed false and derogatory information concerning Communist and Soviet ties of the NCLC and espionage allegations to FBI contacts and publications with a conservative audience. The FBI fed lies concerning the NCLC's ties to right wing organizations, anti-Semitic organizations and the police or Central Intelligence Agency to FBI contacts and publications with a liberal to radical audience.

73. Former FBI employee Gregory Rose was recently arrested for credit card theft in Columbus, Ohio.

74. At all times material to this complaint, the FBI knew the NCLC was in a precarious financial situation. While the FBI disseminated lies to other agencies concerning alleged foreign

funding, the FBI knew that the NCLC was completely dependent upon sales of literature and upon contributions by its own members and supporters in its financing. The FBI also knew the details of the NCLC's payments or non-payments to vendors for services. The FBI utilized this information to stage constant financial disruptions against the NCLC and aimed through this program to bankrupt the NCLC and associated organizations.

75. The FBI was in constant and intrusive contact with the NCLC's landlords, employers of NCLC members, telephone companies providing services to the NCLC, printers of NCLC publications and banks where the NCLC or associated organizations maintained accounts. In addition to establishing fingertip monitoring of NCLC finances and providing all vendors of essential services with constant reminders that the NCLC was the target of an FBI investigation, plaintiffs have direct evidence that the FBI directly intervened to cut essential services or contributions to the NCLC.

76. In 1976 the FBI was in constant contact with the New York Telephone Company and urged the telephone company to terminate the NCLC's account. This disruption occurred in the final months of the U.S. Labor Party's 1976 Presidential campaign, resulted in termination of services upon which the entire national campaign was dependent and was only resolved when the NCLC and U.S. Labor Party obtained a temporary restraining order against the New York Telephone Company in New York State Court.

77. In June of 1975 the FBI obtained information from a source concerning major contributors to the NCLC. The FBI followed up this and other reports by contacting relatives and bank officials associated with NCLC member Philip Ulanowsky. The FBI urged these individuals not to permit Ulanowsky to liquidate a trust fund or obtain a loan on the basis of this fund. This FBI intervention was successful.

78. The Church Committee Staff Report documents FBI activities utilizing state laws and state law enforcement personnel against domestic security targets of FBI investigations under the heading "selective law enforcement." In that report it is

stated that the FBI instructed field offices to have targets arrested on "any violation."

79. The FBI pursued such policy against members of the NCLC in Michigan, New Jersey, Ohio, Connecticut and Virginia during the course of its domestic security investigation of the NCLC. The FBI knew that the NCLC members and U.S. Labor Party members subjected to arrests were engaged in First Amendment activities including literature sales, the funds from which were the primary financial mainstay of the NCLC.

80. In Connecticut from April 1975 to May 1976 NCLC organizers suffered 47 arrests on minor offenses such as obstruction of traffic, soliciting without a permit and other nuisance arrests. In New Jersey between April of 1975 and April of 1976 NCLC organizers suffered 92 arrests on similar offenses. In Michigan from late 1976 through early 1977 members of the NCLC were issued over 115 tickets for alleged traffic and other infractions when they were engaged in First Amendment solicitation activities. NCLC organizers in Ohio were repeatedly arrested for the same pattern of offenses.

81. This FBI disruption program only resulted in a few convictions when NCLC organizers or legal personnel could not adequately defend against the multiplicity of court appearances or encountered a judge hostile to these activities. In Michigan and Connecticut affirmative legal actions had to be undertaken to secure first amendment rights.

82. Actions by FBI officials and state officials in Virginia were specifically targeted against U.S. Labor Party candidate Alan Ogden who received respectable votes in 1974 and 1975 elections. Ogden was arrested on numerous occasions during the 1975-1976 period for breaches of the peace, trespass and related charges and spent a part of his 1976 campaign for Congress in jail on these charges. An injunction by a federal court judge finally ended these activities against Alan Ogden.

83. When the NCLC and U.S. Labor Party sought to exercise its First Amendment rights at K-Mart stores nationally these chains refused to allow the NCLC access to their customers. The NCLC initiated a "strike" against K-Mart to draw attention to what it considered to be the chain's unconstitutional

response. The FBI was in constant contact with K-Mart security personnel, instructing them to eject NCLC members from K-Mart property and initiated an investigation of the NCLC's lawful picket line against K-Mart as a Hobbs Act violation.

84. FBI informants were instructed to gather information on all sites where the U.S. Labor Party and NCLC conducted solicitation activities in order to facilitate these harassment activities. FBI informants Rini and Higgins were consistently involved in such activities and FBI informant Rini coordinated a detention of two NCLC organizers with the FBI and campus police and Cleveland State University in 1974.

85. On February 18, 1976 U. S. Labor Party member Christopher Martinson was told by campus police during a campaign stop by Martinson at Northern Kentucky State College that the FBI had contacted campus police about the U.S. Labor Party's presence on campus and Martinson would be arrested if he continued to solicit on campus.

86. The actions against U.S. Labor candidate Alan Ogden and Chris Martinson were only the late results of a consistent campaign against electoral candidates associated with the NCLC dating from the Fall of 1969.

87. In FBI files in the possession of plaintiffs the FBI boasts in 1969 of counterintelligence action which discredited NCLC leader Steve Fraser who was a candidate for Philadelphia City Council. The FBI claims that its counterintelligence actions against Fraser resulted in discrediting him in the local press and his permanent departure from Philadelphia. The FBI utilized an informant to disrupt Fraser's campaign, disseminated information concerning this disruption to Thomas Gilhool, a political opponent of the NCLC and utilized media contacts to discredit Fraser.

89. The FBI also encouraged and participated with other agents of the U.S. Government in bad faith and harassment actions against members of the NCLC. In two instances of such activities known to plaintiffs the FBI worked with the INS to develop McCarran Act charges against spouses of NCLC members seeking permanent residence in the United States.

90. In the case of Christopher White, these proceedings resulted in long delays in the processing of his permanent residence status. The case of Polly Skinner Johnson remains unresolved to this date because of FBI instigated charges concerning the "Communist" nature of the NCLC.

91. The FBI also routinely collaborated with the INS to delay and prevent Canadian members of the ICLC from travelling to meetings in the United States at the borders, instigated detailed examinations of U.S. Labor Party and NCLC literature in the possession of ICLC members by the INS and instituted cooperative programs with the RCMP and Canadian police officials resulting in arrest and harassment of ICLC members in Canada.

92. Despite public assertions by FBI Director Kelley that the FBI was not investigating the U.S. Labor Party because such investigation might be construed as an interference with the First Amendment rights of an electoral organization, the facts set forth in paragraphs 28-87 demonstrate this statement to be nothing more than a public relations and litigation posture by the FBI Director.

93. Repeated statements by the FBI Director himself, FBI statements to the GAO in 1977, and actions of FBI field offices in routinely opening files on U.S. Labor Party members the moment new recruits were reported to them in addition to other materials in plaintiffs' possession demonstrate that the FBI targeted the U.S. Labor Party for its harassment and disruption actions.

95. The Church Committee report details illegal FBI activities with the media designed to discredit and defame targets of FBI Domestic security and other investigations:

> "The FBI's Crime Records Division was responsible for covert liaison with the media to advance two main domestic intelligence objectives: (1) providing derogatory information to the media intended to generally discredit the activities of targeted groups or individuals; and (2) disseminating unfavorable articles, news releases, and background

information to disrupt particular activities." (Church Committee Report, Book II, pgs. 242, 243.

96. In 1973-1977 the FBI widely disseminated a 5 part defamatory series on the NCLC produced in the Daily World, a 1974 New York Times article by Paul Montgomery entitled "How a Left Group Moved Toward Savagery", a 1973-74 series of columns by Victor Riesel, and a Washington Post article by Paul Valentine. The particular purposes served by these articles was to further the FBI disruption and surrogate warfare program set forth in paragraphs 28-47 and to create maximum dissension in the families of NCLC members.

97. Upon information and belief, the FBI provided materials for and encouraged the production of all of the above articles.

98. Articles appearing in the Washington Post on September 24, 1976, a syndicated column by Jack Anderson in January, 1978, in Homefront, a publication of the IAD distributed throughout the labor movement and a pamphlet prepared on the NCLC by Counterspy-Fifth Estate similarly utilized derogatory materials provided by the FBI and except for the Anderson column are known by the plaintiffs to have been widely disseminated by the FBI.

99. The Counterspy-Fifth Estate journal led to attacks on NCLC and U.S. Labor Party organizers by violent terrorist gangs on the radical left. The Rosenfeld article editorialized to other reporters and media that the NCLC and U.S. Labor Party should be solely covered as Nazis and violence prone individuals. The Homefront articles were utilized to provoke violent attacks by trade unionists against the NCLC.

100. Additionally, the Rose-Communist espionage materials form the basis for a report on the U.S. Labor Party and the Fusion Energy Foundation distributed to business executives throughout the United States in 1978 by the Heritage Foundation. These materials were provided to the Heritage Foundation through the FBI.

101. In addition to these articles, the NCLC is in possession of an FBI recommended reading list of "public source"

material on the NCLC which was widely disseminated to Congressmen and other government officials. Articles listed on this list include materials prepared and furnished by the FBI and other wildly defamatory materials.

102. A November 7, 1975 FBI memorandum in the possession of plaintiffs details the expulsion of journalists associated with the NCLC from the West German press association. The West German press association expulsion was instigated in part by United Press International which based its information on the NCLC on materials provided to UPI by the FBI. The memorandum details UPI's continuing interest in the status of press credentials issued to members of the NCLC by the New York City Police Department. The memo states that these credentials have been "inexplicably" reinstated by the Police Department.

103. Upon information and belief, the FBI engaged in systematic actions to deny or revoke press credentials for members of the NCLC in the United States and in West Germany.

104. In July, 1974, the FBI produced its first FBI attributed characterization of the NCLC as a "violence-prone" organization. The "violence-prone" characterization was in direct response to the armed raid conducted by the FBI on the NCLC's Detroit offices to "locate" Vernon Michael Higgins and was designed to justify this illegal action. Similarly, following the filing of the lawsuit concerning that incident and the incident itself, the FBI issued orders to its field offices which suddenly claimed that the FBI was not investigating the U.S. Labor Party.

105. The FBI's violence-prone characterization and other defamatory information concerning the NCLC including fabricated reports of assassination threats by the NCLC, espionage by the NCLC, etc. were routinely disseminated to state and local police departments in the United States, every intelligence agency in the United States, ERDA and the NRC, U.S. embassies and the Canadian, French, West German and Dutch intelligence services.

106. The impact of such disseminations on a U.S. political party and upon associates of the NCLC in foreign countries attempting to campaign for its policies and programs is beyond

imagination. Government officials and important business and scientific figures in the United States and Western Europe repeatedly refused to hold discussions or further discussions with members of the NCLC because of the FBI characterizations.

107. The annual reports of the Attorney General of the United States characterized the NCLC in 1974, 1975, and 1976 as violence-prone, involved in kidnappings, brainwashings and at least one shooting. These characterizations were willfully false in the worst possible sense. The only 'kidnappings' in which the NCLC had been involved, the only 'brainwashings' in which the NCLC had been involved were FBI disruption activities organized against the NCLC in which the NCLC was the target of these activities. The shooting involved a shooting of NCLC member Thomas Ascher at Lincoln Detoxification Center in New York when the NCLC exposed that Center's involvement in training activities for the Black Liberation Army at a news conference by an employee of the Center.

108. One Month before the November, 1976 elections on October 2, 1976, ABC Television broadcast the following description of U.S. Labor Party Presidential candidate LaRouche:

> ". . . U.S. Labor Party candidate Lyndon LaRouche proposes a moratorium on debt. LaRouche is on nineteen state ballots. He blames Nelson Rockefeller for many of the world's economic ills. FBI Director Clarence Kelley says LaRouche's party is oriented towards violence and brainwashing, a charge the party denies."

109. This statement by Clarence Kelley was the subject of an FBI consent not to interfere further in U.S. Labor Party electoral proceedings in a preliminary injunction proceedings in this lawsuit. Clarence Kelley denied that he provided ABC directly with the statement for the purposes of this particular broadcast in the proceeding. This does not undo the maliciously false characterization or the damage incurred to LaRouche's candidacy by its dissemination on national television.

110. In July of 1978, the FBI proposed to make such media discrediting operations a permanent feature of the NCLC's

existence by placing the FBI's files on the NCLC in the public reading room of the FBI. When the NCLC learned of this fact and learned that various opponents of the NCLC were making their way to Washington for the purposes of endlessly quoting FBI files as an unimpeachable source of information on the plaintiffs, the NCLC sought an injunction against release of these materials to the public.

111. The FBI initially vigorously opposed this motion. Prior to a proposed evidentiary hearing however, the FBI indicated it would consent to an interim stipulation barring such release during the pendency of the present litigation. That stipulation and subsequent FBI actions based upon it is presently the subject of an appeal involving the American Civil Liberties Union before the Second Circuit Court of Appeals. The ACLU seeks release of the files which contain information of an extremely private nature concerning individual NCLC members and wildly false FBI and other uncorroborated accusations against the NCLC.

112. In 1976, under the Attorney General's Guidelines for Domestic Security Investigations, the FBI requested that its full investigation of the NCLC under the domestic security rubric be continued. The Attorney General's Guidelines are cited by the Department of Justice as its "reform" of the FBI to insure that FBI actions do not violate First Amendment and other Constitutional rights.

113. On August 19, 1976 the Acting Attorney General, Harold Tyler, approved continued investigation of the NCLC. The predication for this investigation was possible violation of the civil rights of members of other left wing groups by the NCLC based upon the 1973 incidents between the NCLC and the Communist Party U.S.A. According to an affidavit by Acting Attorney General Tyler in the possession of plaintiffs, the Acting Attorney General spent approximately 20 minutes approving continued full FBI investigation of the NCLC.

114. On September 13, 1977 the FBI's domestic security investigation of the NCLC was finally terminated, without one arrest for violation of the laws of the United States or presentment of evidence of such a violation. The FBI memorandum to

its field offices announcing termination of the *domestic security* investigation stated that the investigation was discontinued because the NCLC "has publicly denounced the use for force and violence as a means of accomplishing its goals." The NCLC never advocated such means for accomplishing its goals.

115. Members of the NCLC have been repeatedly told by law enforcement and other confidential sources since this date that the FBI is continuing its actions against the NCLC under other investigative pretexts.

116. In the 1980 primaries in New Hampshire supporters of LaRouche's candidacy were consistently informed that the FBI was investigating Lyndon LaRouche and his campaign organization.

117. The FBI and its agents are informed continually concerning the hostile disruption activities conducted by the ADL against the NCLC—disruption activities which date from 1973. Many of these activities are illegal and violate the civil rights of NCLC members.

118. The effects of the FBI's wholesale violation of the First Amendment rights of NCLC members and other associates of plaintiff LaRouche continue to this date. Media employed in FBI disruption operations against the NCLC and LaRouche continue defamatory coverage based on characterizations developed by the FBI including reference to the NCLC as a "cult", "violent", "intelligence agency connected" and "anti-Semitic." The most widely circulated defamation during LaRouche's 1980 presidential campaign was an article by Paul Montgomery in the New York Times. Montgomery's 1974 article was part of the FBI disruption program.

119. The NCLC is daily confronted with legislators, Congressmen, government officials, scientists, businessmen and statesmen who express hesitations about collaboration based upon the "reputation" of the NCLC, a reputation created in large part by the FBI, and because of the FBI investigation itself, which was widely publicized.

120. Political candidates who are members of the NCLC spend inordinate amounts of time dealing with misinformation in the general public or defamations concerning the NCLC,

Lyndon LaRouche and the candidate's political associations. Characterizations of the NCLC developed through the FBI's domestic security actions are the cause of this phenomena and the same defamatory characterizations are regularly utilized by political opponents and other opponents of candidates who are members of the NCLC.

121. The allegations set forth in paragraphs 12-120 constitute acts by the FBI presently known to plaintiffs which resulted in direct deprivations of Constitutional rights or guaranteed under the First, Fourth, Fifth and Ninth Amendments to the U.S. Constitution. No part of the domestic security investigation conducted of plaintiffs was without bad faith motive and all information obtained was the result of an unconstitutional plan of action designed to destroy and discredit the NCLC and U.S. Labor Party.

122. The FBI's actions concerning the individual plaintiffs from December 31, 1975 forward, in addition to violating their Constitutional rights, also violated provisions of the Privacy Act. This Act prevents the FBI from maintaining records on how an individual exercises rights guaranteed under the First Amendment unless it is pertinent to and within the scope of authorized law enforcement activity. The Privacy Act mandates relief if such activity by the FBI has an adverse effect on the individual.

SECOND CAUSE OF ACTION

123. Defendants continue to unlawfully withhold records pertaining to the NCLC, U.S. Labor Party and the individual plaintiffs duly requested under the Freedom of Information Act and the Privacy Act.

124. On or about October 25, 1975, Edward Spannaus on behalf of plaintiff NCLC requested FBI release of all records in its possession concerning the NCLC. On or about May 3, 1977, the FBI released 5,303 pages of documents in whole or in part to Mr. Spannaus pursuant to this request.

125. Pursuant to subsequent administrative appeal by the NCLC 1,895 additional pages of the NCLC files were released and 1,024 reprocessed pages were released. Subsequent to this

release a small number of additional pages have been released, including documents from the FBI's Headquarters main NCLC file, the FBI's "Kwarterback" file, and various other files. The "Kwarterback" file, to plaintiffs' present knowledge, is a file concerning special actions by the FBI against the NCLC and its members which resulted from collaboration between the FBI and FBI informant Gregory Rose.

126. Defendants are unlawfully withholding in excess of 13,000 pages of documents from its Headquarters NCLC files, including the main NCLC file and the "Kwarterback" file.

127. On or about September 21, 1977, Edward Spannaus on behalf of plaintiffs NCLC and U.S. Labor Party requested that the FBI release to him all records concerning the NCLC and associated organizations maintained in the FBI New York Field Office.

128. On or about October 19, 1977, J. Wallace LaPrade, Assistant Director in Charge of the New York Field office, notified Mr. Spannaus that this office had located 11 documents pertaining to the NCLC. 10 of these 11 documents were withheld pursuant to claimed exemptions under the FOIA.

129. On or about October 28, 1977 the NCLC and U.S. Labor Party filed an administrative appeal with the Department of Justice. Pursuant to this administrative appeal, portions of nine documents consisting of 140 pages were released.

130. As a result of further conversations and correspondence, the FBI discovered that there were in fact 82 sections of documents on the NCLC in the New York Field Office, including 5,000 pages of documents which were never transmitted to FBI headquarters. On or about June 14, 1979, the FBI released 2,690 additional pages of NCLC and U.S. Labor Party New York Field Office files, many of which were excised in part. 2,667 pages were withheld in their entirety.

131. On or about June 29, 1979 the NCLC and U.S. Labor Party filed an administrative appeal on the June 14th, 1979 release with the Department of Justice. On or about August 15, 1979, Quinlan J. Shea, Jr., Director of the Department of Justice Office of Privacy and Information Appeals, affirmed the action of the FBI and denied access to the withheld documents.

132. Plaintiffs NCLC and U.S. Labor Party have exhausted their administrative remedies concerning their October 25, 1975 request under the FOIA-PA to the FBI and their October 19, 1977 request concerning files in the New York Field Office.

133. During 1975, plaintiffs Spannaus, Boyd, Sneider, Salisbury, Ghandhi, Gallagher, Nancy Spannaus, Spida, Michaelson, Schultz and Kay requested access to their FBI files under the Freedom of Information and Privacy Acts. In all cases some documents were released to the individual plaintiffs and other documents were withheld in whole or in part.

134. The named individual plaintiffs filed administrative appeals with the Department of Justice, appealing the denial of access to certain documents concerning them maintained by the FBI. The Department of Justice upheld the FBI's decision denying access to these documents in each administrative appeal.

135. The named individual plaintiffs have exhausted their administrative remedies concerning their 1975 requests for access to their FBI files.

136. Plaintiffs NCLC, U.S. Labor Party and the named individual plaintiffs believe that they are entitled to inspect and copy the requested records and that defendants' withholding of said records had no basis in law.

WHEREFORE, plaintiffs respectfully pray that this Court:

(1) Issue a declaratory judgment that the FBI investigation of plaintiffs NCLC and the U.S. Labor Party and the individual plaintiffs was conducted in bad faith, was *ultra vires* and violated the First Amendment rights of all plaintiffs and rights guaranteed under the Fourth, Fifth and Ninth Amendments to the U.S. Constitution of members of the NCLC and U.S. Labor Party;

(2) Issue a permanent injunction at the trial of this action, enjoining the FBI, its agents, attorneys and employees and all those acting in privity or concert with them from engaging in the unlawful disruptive techniques specified in this complaint and at the trial of this action;

(3) Issue a mandatory injunction to the Director of the FBI and the Attorney General of the United States directing them to notify each and every agency, organization and/or individual receiving derogatory and/or false information concerning plaintiffs as a part of the FBI's disruption program that the disseminations were false and/or the results of unconstitutional and bad faith actions by the FBI against the plaintiffs;

(4) Issue a mandatory injunction ordering the FBI to produce documents requested pursuant to the FOIA and Privacy Act, and which have been unlawfully withheld by FBI and Department of Justice, to plaintiffs for inspection and copying.

Mayer Morganroth

MAYER MORGANROTH

Attorney for Plaintiffs
Office and P.O. Address
Suite 314B, Heritage Plaza
24901 Northwestern Highway
Southfield, Michigan 48075
(313) 355-3084

Dated: New York, N.Y.
April 2, 1982

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYNDON H. LAROUCHE, JR., *et al.*, *Plaintiffs,*	:	AMENDED ANSWER
– *v* –	:	
WILLIAM H. WEBSTER, *et al.*, *Defendants.*	:	75 Civ. 6010 (MJL)

Defendants, by their attorney, John S. Martin, Jr., United States Attorney for the Southern District of New York, for their amended answer to the Second Amended Complaint (the "complaint"), allege upon information and belief as follows:

1. Admit that plaintiffs are seeking the relief stated in paragraphs 1, 2 and 3 of the complaint, but deny the remainder of the allegations therein.

2. State that paragraph 4 of the complaint contains conclusions of law to which no answer is required, but insofar as an answer is deemed required, admit that plaintiffs seek to invoke the jurisdiction of the Court under the statutes cited therein, admit that venue is proper in the Southern District of New York, and deny the remainder of the allegations therein.

3. With regard to paragraph 5 of the complaint, admit that the plaintiffs named therein are or were members of the U. S. Labor Party and National Caucus of Labor Committees ("NCLC"), admit that the named plaintiffs were subjects, but not targets, of FBI investigation as a result of their membership in the NCLC, but not as a result of their membership in the U. S. Labor Party, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

4. With regard to paragraph 6 of the complaint, admit that plaintiff LaRouche founded the NCLC and the U. S.

Labor Party, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

5. Admit the allegations contained in the first two sentences of paragraph 7 of the complaint, and deny the allegations contained in the third sentence thereof.

6. With regard to paragraph 8 of the complaint, admit the allegations contained in the first and fifth sentences thereof except deny knowledge or information sufficient to form a belief as to the truth of the allegations therein pertaining to the period after September 13, 1977, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second, third and fourth sentences thereof.

7. Admit the allegations contained in paragraphs 9, 10, 11 and 12 of the complaint.

8. Deny the allegations contained in paragraph 13, 14 and 15 of the complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.

10. Admit the allegations contained in the first and third sentences of paragraph 17 of the complaint, deny the allegations contained in the second sentence thereof, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence thereof.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 18, 19 and 20 of the complaint.

12. Admit the allegations contained in paragraph 21 of the complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegation that the International Caucus of Labor Committees ("ICLC") was

established "to promote the broad programmatic goals outlined [in the complaint]."

13. With regard to paragraph 22 of the complaint, admit that some members of the NCLC and ICLC have created and sold the publications named therein and have held part-time employment, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 23 of the complaint and deny the allegations contained in the second sentence of said paragraph.

15. Deny knowlege or information sufficient to form a belief as to the truth of the allegations contained in the first paragraph 24, the second paragraph 24, and paragraph 25 of the complaint, except admit that the U. S. Labor Party and the Fusion Energy Foundation ("FEF") were founded in the years alleged, and admit that FEF publishes Fusion Magazine.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the complaint except admit that members of the NCLC have been candidates for public office, deny that members of the NCLC have been targets of illegal FBI actions, and deny that members of the NCLC have been defamed by the FBI.

17. Deny the allegations contained in paragraph 27 of the complaint.

18. Deny the allegations contained in paragraphs 28 and 29 of the complaint and respectfully refer the Court to the Church Committee Report for a complete statement of its contents.

19. Admit the allegations contained in the first sentence of paragraph 30 of the complaint, deny the allegations

contained in the second and third sentences thereof and respectfully refer the Court to the leaflet in question for a complete statement of its contents.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the complaint, except neither admit nor deny the Gregory Rose was an FBI informant.

21. Deny the allegations contained in paragraphs 34, 35 and 36 of the complaint, except admit that, in 1973, the NCLC was invloved in a series of physical altercations with members of the Communist Party U.S.A., and that the NCLC engaged in physical confrontations with the Communist Party at Communist Party meetings.

22. Admit the allegations contained in paragraph 37 of the complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the complaint except deny the allegations contained in the third sentence thereof, and admit the allegations contained in the second sentence thereof insofar as they pertain to the Revolutionary Union.

24. Deny the allegations contained in paragraph 39 of the complaint.

25. Deny the allegations contained in paragraph 40 of the complaint and respectfully refer the Court to the newspaper article in question for a complete statement of its contents.

26. Deny the allegations contained in the third sentence of paragraph 41 of the complaint, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first and second sentences thereof.

27. Deny the allegations contained in paragraphs 42 and 43 of the complaint.

28. Admit the allegations contained in the first sentence of paragraph 44 of the complaint, deny the allegations contained in the second sentence thereof, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence thereof.

29. Deny the allegations contained in the first sentence of paragraph 45 of the complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence thereof, except neither admit nor deny that Gregory Rose was an FBI informant.

30. Deny the allegations contained in paragraph 46 of the complaint.

31. Deny the allegations contained in the first, third and fifth sentences of paragraph 47 of the complaint, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second and fourth sentences thereof.

32. Deny the allegations contained in paragraphs 48 and 49 of the complaint and respectfully refer the Court to the "GAO Report" for a complete statement of its contents.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 50, 51, and 54 of the complaint.

33A. Deny the allegations contained in paragraph 52 of the complaint.

33B. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 53 of the complaint and deny the allegations contained in the third sentence thereof except admit that the FBI received a complaint that the NCLC was harassing the Roeschmans.

34. Deny the allegations contained in paragraph 55 of the complaint.

35. With regard to paragraph 56 of the complaint, admit that on occasion FBI agents visited employees of NCLC members, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 56, and deny the remaining allegations therein.

36. Deny the allegations contained in the first sentence of paragraph 57 of the complaint and deny knowledge or information sufficient to form a belief as to the tuth of the allegations contained in the remaining sentences thereof.

37. Deny the allegations contained in paragraph 58 of the complaint, except admit that the FBI visited the former landlord of three NCLC members in Lorain, Ohio at the landlord's invitation.

38. Deny the allegations contained in the first and sixth sentences of paragraph 59 of the complaint, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remaining sentences thereof.

39. Deny the allegations contained in paragraph 60 of the complaint.

40. Admit the allegations contained in the first sentence of paragraph 61 of the complaint and deny the allegations contained in the second sentence thereof.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the complaint except deny the allegations contained in the final sentence thereof and neither admit nor deny that George Littlewood was an informant.

42. Deny the allegations contained in paragraph 62 of the complaint except admit that William Rini gave information concerning the NCLC to the FBI.

43. With regard to paragraph 64 of the complaint, admit that Vernon Higgins was an informant for the FBI as

a member of the NCLC and as a member of the Ku Klux Klan; deny that the FBI "deployed" Higgins in the NCLC, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

44. Deny the allegations contained in paragraph 65 of the complaint except admit that the lawsuit referred to therein was filed and subsequently dismissed, and admit that FBI and local law enforcement officers entered the offices of the NCLC pursuant to a valid search warrant.

45. Deny the allegations contained in paragraph 66 of the complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the complaint, except neither admit nor deny that Gregory Rose was an FBI informant.

47. Deny the allegations contained in paragraph 68 of the complaint.

48. Deny the allegations contained in paragraph 69 of the complaint.

49. Deny the allegations contained in paragraph 70 of the complaint.

50. With regard to paragraph 71 of the complaint, admit that Gregory Rose authored an article in the March 30, 1979 edition of the National Review, deny the remaining allegations contained therein and respectfully refer the Court to the National Review article for a complete statement of its contents.

51. Deny the allegations contained in paragraph 72 of the complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the complaint.

53. Deny the allegations contained in paragraphs 74, 75 and 76 of the complaint, except admit that the NCLC and U.S. Labor Party obtained a temporary restraining order against the New York Telephone Company that was subsequently vacated.

54. Deny the allegations contained in paragraph 77 of the complaint except admit those contained in the first sentence thereof.

55. Deny the allegations contained in paragraph 78 and 79 of the complaint and respectfully refer the Court to the Church Committee Report for a complete statement of its contents.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the complaint.

57. With regard to paragraph 81 of the complaint, deny that the FBI engaged in a "disruptive program" against the NCLC and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraph.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 82, 83, 84 and 85 of the complaint.

59. Deny the allegations contained in paragraphs 86 and 87 of the complaint and respectfully refer the Court to the document mentioned in paragraph 87 for a complete statement of its contents.

60. With regard to paragraphs 89 and 90 of the complaint, deny the allegations contained therein, except admit that the FBI provided information to the Immigration and Naturalization Service regarding the two named individuals.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the complaint.

62. Deny the allegations contained in paragraphs 92, 93, 95 and 98 of the complaint and respectfully refer the Court to the Church Committee Report and to the various publications mentioned in said paragraphs for a complete statement of their contents.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 96 and 97 of the complaint, except deny the allegations contained in the second sentence of paragraph 96.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 99, 100, 101, 102 of the complaint except deny the allegations contained in the last sentence of paragraph 100.

65. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the complaint.

66. With regard to paragraph 104 of the complaint, admit the allegations contained in the first sentence thereof, admit that the FBI occasionally issued orders to its field offices that they were not to investigate the U.S. Labor Party, and deny the remaining allegations thereof.

67. With regard to paragraph 105 of the complaint, admit that the FBI's "violence-prone characterization" of the NCLC was routinely disseminated to certain law enforcement agencies and deny that any defamatory information was so disseminated.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the complaint.

69. With regard to paragraph 107 of the complaint, deny the allegations contained in the first three sentences thereof, respectfully refer the Court to the annual reports of the Attorney General of the United States for a complete statement of their contents, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last sentence thereof.

70. Admit the allegations contained in paragraph 108 of the complaint.

71. With regard to paragraph 109 of the complaint, deny the allegations contained in the first and third sentences thereof and admit the second sentence thereof.

72. Deny the allegations contained in paragraph 110 of the complaint except admit that, in July of 1978, the FBI placed certain of its files on the NCLC in its public reading room and that the NCLC sought an injunction against the release of these materials to the public.

73. With regard to paragraph 111 of the complaint, admit the allegations contained in the first two sentences thereof, deny the allegations contained in the last sentence thereof except admit that the American Civil Liberties Union is seeking the release of certain FBI files, and state that the proceedings in the Court of Appeals for the Second Circuit referred to therein have now been completed.

74. Admit the allegations contained in paragraph 112 of the complaint, except deny any inference therein that the FBI violated the constitutional rights of plaintiffs.

75. With regard to paragraph 113 of the complaint, admit the allegations contained in the first sentence thereof, deny the allegations contained in the second and third sentences thereof, and respectfully refer the Court to the addidavit described therein for a complete statement of its contents.

76. With regard to paragraph 114 of the complaint, admit that the FBI's domestic security investigation of the

NCLC was terminated on September 13, 1977; admit the allegations contained in the second sentence of said paragraph, deny knowledge or information sufficient to form a belief as to the truth of the allegation that the investigation was terminated "without one arrest for violation of the laws of the United States or presentment of evidence of such violation," and deny the allegations contained in the last sentence of said paragraph.

77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 115 and 116 of the complaint, except deny that the FBI has taken any of the action described in said paragraphs.

78. Deny the allegations contained in the first sentence of paragraph 117 of the complaint except admit that the FBI has received complaints from NCLC members concerning the ADL, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of said paragraph.

79. Deny the allegations contained in paragraph 118 of the complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence thereof.

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the complaint except deny that the repuation of the NCLC was "created in large part by the FBI, and because of the FBI investigation itself, which was widely publicized."

81. With regard to paragraph 120 of the complaint, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence thereof and deny the allegations contained in the second sentence thereof.

82. Deny the allegations contained in paragraphs 121, 122, and 123 of the complaint.

83. With regard to paragraph 124 of the complaint deny the allegations contained in the first sentence thereof and respectfully refer the Court to Mr. Spannaus' letter of October 25, 1975 for a complete statement of its contents, and admit the allegations contained in the second sentence thereof.

84. Admit the allegations contained in the first two sentences of paragraph 125 of the complaint and deny the remaining allegations thereof except neither admit nor deny that Gregory Rose was an FBI informant.

85. Deny the allegations contained in paragraph 126 of the complaint.

86. Deny the allegations contained in paragraph 127 of the complaint and respectfully refer the Court to Mr. Spannaus' letter of September 21, 1977 for a complete statement of its contents.

87. Admit the allegations contained in paragraphs 128, 129, 130, 131, 132, 133, 134, 135, of the complaint, except state that plaintiffs NCLC and U.S. Labor Party have failed to pay for the documents from the New York Field office produced to them under the FOIA.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 136 of the complaint, and deny that any records have been withheld from plaintiffs unlawfully.

AFFIRMATIVE DEFENSES

89. This action is moot.

90. Plaintiffs have failed to exhaust their administrative remedies under the Privacy Act.

91. Plaintiffs are collaterally estopped by the decision in *Ghandi et al.* v. *Police Department of the City of Detroit*

et al., Civ. No 74-72019 (E. D. Mich. May 10, 1982), from asserting the allegations in paragraphs 64-66 of the complaint.

92. Plaintiffs are barred by the doctrine of *res judicata* from asserting the allegations in paragraph 61 of the complaint. *See National Caucus of Labor Committees, et al.* v. *Banks et al.*, Civ. No. 75-1536 (D.N.J. September 27, 1977).

WHEREFORE, defendants pray for judgment dismissing the complaint and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 23, 1982

JOHN S. MARTIN, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: /s/
STEVEN E. OBUS
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-9168

To: MAYER MORGANROTH
Suite 314B, Heritage Plaza
24901 Northwestern Highway
Southfield, Michigan 48075

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 84-4685
84-4849

THE LA ROUCHE CAMPAIGN, et al.,	:	TRANSCRIPT OF PROCEEDINGS
Plaintiffs,	:	
vs.	:	OPINION
FIRST NATIONAL STATE BANCORPORATION, et al.,	:	Newark, New Jersey
	:	March 11, 1985
Defendants.	:	

BEFORE:
THE HONORABLE HAROLD A. ACKERMAN, U.S.D.J.

Appearances:
JOEL J. REINFELD, ESQ.
Attorney for the Plaintiffs

HANNOCH, WEISMAN, STERN, BERKOWITZ
& KINNEY, ESQS.
BY: ROBERT EPSTEIN, ESQ.
Attorneys for First National State, First Fidelity

CHASAN, LEYNER, TARRANT & D'ITALIA, ESQS.
BY: ARTHUR D'ITALIA, ESQ.
Attorneys for IDL

THE COURT: These two consolidated actions arise out of certain credit transactions between the parties pursuant to Bank Card Merchant Agreements. They were consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure by order of Magistrate Perretti filed February 20, 1985. Civil Action No. 84-4685 was filed on November 14, 1984 by plaintiffs therein: The LaRouche Campaign (TLC) and Independent Democrats for LaRouche (IDL). The named defendants are First National State Bancorporation and First Fidelity Bank, N.A. What does that N.A. mean?

MR. EPSTEIN: I don't know exactly what the letters stand for, Judge.

THE COURT: I'll just —

MR. REINFELD: I believe it's National Association which is used with bank associations.

THE COURT: I never knew what that meant.

N.A. of New Jersey. Plaintiffs asserted a variety of claims therein regarding the alleged failure of defendants to properly credit their accounts, issue a request bank check and the bank's alleged unauthorized seizure of funds contained in plaintiffs' accounts.

On November 16, 1984, the defendant First Fidelity Bank in Civil Action No. 84-4685, filed a complaint in the Superior Court of New Jersey, Chancery Division-Essex County against TLC IDL and others. The complaint alleged that certain written material distributed by defendants therein, presumably in retaliation for the acts alleged in the federal action in which TLC and IDL were plaintiffs, constituted malicious interference with prospective trade, being economic relationships, trade disparagement and libel per se under state law. By petition for removal filed in this Court on November 26, 1984, the defendants therein removed the state action to the United States District Court. The case was given Civil Action No. 84-4849. Subsequently, the defendants in both federal actions filed answers asserting counterclaims consisting of the affirmative claims made in the complaints in the actions in which they were plaintiffs and as noted *supra* the cases were properly consolidated by this court under Civil Action 84-4685. I will thus hereinafter refer to TLC and IDL as the plaintiffs and to the bank as defendant.

I note that counsel for the bank has continued to file papers in this action bearing the docket number of the earlier action but the caption of the latter action removed from state court. This is improper. The docket number *and* the caption of the earlier case, *i.e.* 84-4685, should be used hereafter.

The caption of the 84-4685 case should be amended to reflect the parties and claims asserted in the consolidated matter. Further questions in this regard should be directed to the clerk's office.

This case is presently before me on the bank's motion for partial summary judgment on plaintiffs' claims in 84-4685, and its motion for partial summary judgment on plaintiffs' counterclaims in what was heretofore 84-4849. These two motions will be considered as one. The case is also before me on plaintiffs' cross-motion for summary judgment on its claims against the bank as well as the bank's motion for fees and costs arising out of an earlier application by TLC and IDL for modification of restraints entered by the state court in the predecessor of the federal action numbered 84-4849. The application was subsequently withdrawn.

I turn first to the cross-motions for summary judgment on plaintiffs' claims that the bank acted improperly with regard to certain credit transactions and the alleged seizure of funds. Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment shall not be granted unless, drawing all reasonable inferences in favor of the non-moving party, there are no genuine issues of material fact such that the moving party is entitled to judgment as a matter of law. See *Sames v. Gable*, 732 F.2d Page 49 at Page 51 (3d Cir. 1984).

The essentially undisputed facts are as follows. Plaintiff TLC is the principal authorized campaign committee for the 1984 presidential primary election campaign of Lyndon H. LaRouche, Jr. Mr. LaRouche was a candidate for the 1984 democratic presidential nomination. Plaintiff IDL is the principal authorized campaign committee for the 1984 presidential general election campaign of Mr. LaRouche. After the Democratic National Convention, Mr. LaRouche ran as an independent candidate for the presidency.

On or about January 12, 1984, TLC entered into an agreement with First National State Bank of New Jersey, now First Fidelity Bank. The Bank Card Merchant Agreement is set forth in a standard form prepared by the bank, a copy of which is Exhibit A to the affidavit of the bank supervisor Bernard A. Cribben filed February 1st, 1985 in what was formerly No. 84-4849. In essence, the agreement permitted TLC, the "merchant," within the terms of the agreement, to obtain immediate credit for the face amount of all credit card sales slips delivered

to the bank in conformance with the agreement less an agreed upon amount retained by the bank as a fee. Section 2.02 of the agreement is the operative subsection. It states: "Upon delivery of a sales slip to bank in accordance with Section 1.08 hereof, bank will credit to merchant, or to merchant's account at bank or at another bank as agreed upon between bank and merchant ("Merchant Account"), the face amount of such sale slip, less such discount amount as merchant and bank may agree upon from time to time. Bank may refuse to give merchant immediate credit for any sales slip that does not conform in every respect to the requirements of Sections 1.04 through 1.07 hereof."

Further, the bank retained the right to charge against the merchant account the full amount of any sales slip which is determined *inter alia* to be fraudulent, illegible, improperly endorsed, facially defective in some respect, duplicative, obtained without prior authorization, based on an expired or invalid credit card, disputed by the customer or otherwise in violation of the law or of the agreement. See Crippen affidavit at Paragraph 2.04(a-i). The agreement further contained the following provisions:

> "3.06 notice. Any notice required or permitted to be given hereunder shall be effective if given in writing by depositing such notice in the United States mail postage prepaid and if to bank, addressed to the branch office where merchant then presents its sales slips under this agreement, and if the merchant, addressed as indicated below following merchant's signature, or to such other places as either party hereto may hereafter designate by written notice to the other.
>
> "3.07. Termination. This agreement may be terminated by either party at any time upon written notice given to the other; provided, however, that notwithstanding such termination, this agreement shall remain in full force and effect with respect to any item that is actually delivered to bank by merchant and not returned to merchant. The right of merchant to effect card transactions as specified in this agreement, and to use advertising displays and other

materials developed for use in bank's card program, shall cease immediately upon termination of this agreement.

"3.08. Amendment. This agreement may be amended from time to time in writing by mutual consent of the parties, and may also be amended by bank upon written notice to merchant at least ten calendar days prior to the effective date of the amendment, and accepted by merchant either in writing or by failing to give bank written objection to such amendment within such ten-day period."

The agreement is signed by Richard Welsh, assistant treasurer of TLC. The address given is 304 West 58th Street in New York City.

The agreement contains no standard for excessive chargebacks, no maximum credit limit no restriction on merchant's access to funds credited to its account and no requirement that chargebacks not exceed credit at any given time. In short, on its face, the agreement appears to contemplate the giving of credit in return for a fee at some risk to the bank in the event that chargebacks exceed credited funds due to a withdrawal of cash by the merchant from its account.

On July 23, 1984, IDL entered into a similar, but not identical agreement with the bank. In pertinent part, ILD's agreement with the bank differed from TLC's agreement with the bank in several respects. Section 2.04 of the standard bank drawn agreement entered into with IDL provides for chargeback *or* payment on demand in an expanded list of instances. Though expanded and particularized, however, this long list of instances includes no authorization for chargeback, seizure of funds, or payment on demand where the bank merely suspects that one of these irregularities has occurred. See *Crippen* affidavit, Exhibit C at Section 2.04.

Section 3.07 regarding termination was changed to read as follows:

"Termination. This agreement may be terminated by either party at any time upon written notice given to and

received by the other respective party. The right of merchant to effect card transaction as specified in this agreement and to use advertising displays and other materials developed for use in bank's card program, shall cease immediately upon termination of this agreement. Any items delivered to the bank after such termination will be returned to the merchant. However, in the event that such termination the bank should accept any items from the merchant, such items will be handled on a collection basis only. The bank gives no guarantee regarding their payment and will credit the merchant only for those monies received less any service charges which may be imposed. All other items which are returned or remain uncollected for any or no reason shall, if possible, be returned to the merchant."

The provisions regarding notice and amendment remain the same in all pertinent respects. The agreement was signed by Gerald Rose, treasurer and Richard Welsh, assistant treasurer of IDL. The address given was 304 West 58th Street, New York City.

On November 1st, 1984, the rate of chargebacks on TLC and IDL's merchant accounts together with information to the effect that the various LaRouche organizations were being investigated by the FBI regarding campaign funding practices from some unspecified source, led the bank to attempt to terminate the agreement with plaintiffs. For purposes of these motions it is undisputed that the following pertinent events occurred at that time:

1. On November 1, 1984, IDL tenders to the bank credit card slips totalling $112,650.

2. On November 1, 1984, IDL by telephone requests issuance of a $233,249.70 certified check to CBS, drawn in part against the $112,650 of credit card slips.

3. Also on November 1, in the same telephone call in which the CBS check is requested, IDL is told by the bank that its merchant account is terminated.

4. Further, IDL is orally advised that $170,000 has been debited from its merchant's account.

5. By letter dated and sent November 1st, addressed to IDL, the bank notifies IDL of termination of the IDL and TLC merchant agreements and of the hand debiting of $170,000 from the IDL account and $30,000 from the TLC account as a reserve to be held in "suspense accounts" against future anticipated chargebacks. See Mr. Cribben's affidavit in that regard.

6. On November 2nd, 1984, IDL receives from the bank a telegram, sent that day, confirming termination of the merchant agreement. See Mr. Cribben's affidavit at Exhibit G.

7. Finally, on November 5th, 1984, the bank mails back to IDL unprocessed, $112,650 of credit card slips tendered on November 1st. See Mr. Cribben's affidavit Exhibit I.

8. Also on November 5th, IDL receives the November 1st letter referred to above.

The complaint makes the following claims based on these facts.

1. IDL claims that the bank breached the merchant agreement which it contends was still in effect on November 1st or some other contract rendered enforceable through the doctrine of promissory estoppel when it refused to process the $112,650 in credit slips delivered on that date.

2. IDL claims that the bank breached the merchant agreement interpreted in light of a previous course of dealing between the parties, or some other contract between the parties, when it refused to issue a bank check in the amount of $233.249.70 in part drawn on the $112,650 in credit slips noted *supra* to CBS in partial payment for a half hour of time on the air designed to promote the LaRouche candidacy.

3. IDL claims that the bank violated the merchant agreement and tortiously injured the plaintiff when it unilaterally

seized the $170,000 already credited to its merchant account on November 1st, 1984.

4. TLC claims that the bank violated the merchant agreement which was never properly terminated and tortiously injured plaintiff when it unilaterally seized the $30,000 already credited to its merchant account on November 1st, 1984.

5. TLC and IDL assert claims of negligence against defendant National Data Corporation (NDC). Neither the claims of tortious conversion nor the negligence claims against NDC have been briefed by the parties and I decline to consider them further at this time.

In considering the above-listed claims, it is clear that the critical question is when and if the bank's termination of the two agreements at issue became effective. In essence, TLC argues that its agreement was never terminated and that no written notice was ever sent to it as required under Section 3.06 of the agreement. IDL contends that neither the oral notice of termination nor the mailing of the termination letter on November 1st terminated the agreement under Section 3.07 of its contract but instead argues that termination became effective when it received a telegram on November 2nd, 1984.

In opposing plaintiff's motion and in support of its own, defendant bank argues that termination became effective on November 1st and that in any event it had no duty under the agreements or otherwise to process the sale slips or to issue a check to CBS in light of prior excessive chargebacks and its showing of overdraft due to subsequent chargebacks based on customer complaints. See Mr. Cribben's affidavit at Exhibit E. In short, an insufficiency of funds to cover the requested check.

Further, the bank contends that its self-help seizure of the funds in the two merchant accounts was justified and valid under the agreements as well as under the statutory and common law of New Jersey.

I turn first to consideration of the effective date of termination of IDL's agreement as a matter of law. The merchant agreement with IDL provides that the contract may be terminated by written notice "given to and received by the other party." But it also provides that notice is effective when placed

in the mail. IDL contends that the more specific termination provision overrides any contrary meaning to be drawn from the notice provision and thus that receipt of written notice is a condition precedent to termination rendering the agreement terminated in this case on 11/2 when IDL received the telegram from the bank. The bank contends that the termination was effective on November 1st when IDL was orally notified or, in the alternative, when written notice was sent to IDL. The bank contends that receipt is a condition subsequent to effective termination, that is, that termination is effective upon mailing so long as it is received subsequently. I am not persuaded by the bank's arguments in this regard.

As to the effect of actual oral notice on November 1st, as I stated during the colloquy, I find it is of no legal consequence. The agreement explicitly requires written notice and further permits contract modification or amendment in writing only. As I said earlier, this Court will not make a better contract for the parties than they bargained for and will not rewrite the express terms of instant agreement.

As to whether written notice renders termination effective upon mailing or receipt, a stronger and fairer interpretation of the language of Section 3.06 and 3.07 read in tandem leads to a conclusion that receipt is required. First, the notice provision is addressed generally to any notice required under the contract. By contrast, the termination provision specifically deals with termination and unambiguously calls for receipt of notice for termination to be effect. Basic principles of contract construction support the conclusion that the specific should govern the general where ambiguity or conflict is present.

Second, it is fundamentally unfair to read into ambiguous contractual language a meaning which would permit the terminating party to know of the effective termination several days prior to the time that the unsuspecting party is informed. With such a reading commercial situations could arise which would permit the terminating party to take advantage of the unsuspecting co-contractor who has not yet learned that his rights and liabilities are no longer governed by the contract in question.

Finally, "where there is ambiguity in a contract, words are to be construed against the drafter." See *Matter of the Community Medical Center,* 623 F.2d 864 (3d Cir. 1980) (applying New Jersey law), in this case, the bank. I therefore find that IDL's merchant agreement was in effect until it received a telegram on November 2nd.

I turn now to the question of the effective date of termination of TLC's merchant agreement. TLC claims it was never properly notified of termination because all written notices were addressed to IDL in direct contravention of the notice provision of its contract. The bank argues that termination was effective when written notice was sent to IDL and to hold otherwise would evaluate form above substance to an absurd degree.

I find that TLC's contract was effectively terminated at the time written notice was sent to IDL. The termination provision of TLC's agreement states only that written notice must be "given to the other." The words "and received by" *do not* appear in TLC's contract with the bank. The notice provision specifies that notice is effective when mailed as in IDL's contract. In this case, there is but a shade of ambiguity. The stronger interpretation is that the notice provision governs the termination provision to the extent that the words "given to" imply a contrary requirement that notice of termination be received to be effective. The express requirements of Section 3.06 govern the implied meanings of the language in 3.07. I thus conclude that termination is effective when notice is sent, but, because notice not received can hardly be called notice given, I find that receipt of notice remains a condition subsequent to effective termination implied from the language of 3.07.

I note that the language of TLC's agreement clearly indicates that notice is effective when sent. Neither the language of the termination provision nor the considerations which led me to read IDL's agreement differently override the clear language of TLC's contract. I will not, as I said previously, give TLC better terms than it bargained for here.

I turn now to the interrelated questions: Did TLC actually receive written notice and is the technical defect in the addressee of the notice fatal to effective termination. As to

technical defect, I find that it is not fatal to termination if, in fact, notice was received. As the bank correctly points out in its reply memorandum to this court, IDL and TLC gave the same street address on their respective contracts on 304 West 58th Street, New York City. The signatory for TLC was Mr. Richard Welsh, who is also one of two signatories to IDL's contract. The November 1st letter was sent to the attention of Mr. Welsh although I note the telegram was sent to the attention of Gerald Rose at IDL.

For these reasons, I agree that the technical defect in notice of termination to TLC is not fatal if notice was in fact received. TLC has submitted no evidentiary materials of the sort cognizable under Rule 56 to the effect that it did not in fact receive the letter and telegram sent to IDL in which the account number for the TLC account appears as well. I therefore find that no genuine issue of fact exists in this regard and that TLC received notice as a matter of law either on November 2nd via telegram or November 5th by the letter sent on November 1st. TLC's contract was thus terminated effective on the date and time that the November 1st letter was deposited with the United States mail. See Section 3.06. Since no affidavit indicates to the contrary, I find that the November 1st letter was mailed on that date. See Mr. Crippen's affidavit at Page 4.

However, although the agreement with TLC was terminated on November 1st, no affidavit or document indicates at what time the letter was mailed and whether it was prepared or mailed before or after TLC, $30,000 was seized by the bank and placed in a joint "suspense account" with IDL's funds. A genuine issue of material fact thus precludes summary judgment in either party's favor on TLC's breach of contract claims against the bank.

Having determined the date of effective termination of the agreements, I turn now to a consideration of each of the four claims presently before me: 1. IDL's claim that failure to process the $112,650 in credit slips on November 1st was breach of contract;

2. IDL's claim that failure to issue a check in the amount requested was breach of contract;

3. IDL's claim that seizure of its $170,000 was breach of contract and otherwise improper and.

4. TLC's claim to the same effect regarding its $30,000.

As to the $112,650 in credit slips tendered to the bank by IDL on November 1st, I find that the bank's refusal to process them was a breach of the still existing merchant agreement. As noted *supra,* the agreement requires the bank to credit the merchant or his account with the face amount of sales slips presented in conformance with the agreement less an agreed upon fee.

Section 2.02 goes on to state that the bank "may refuse to give merchant *immediate credit* " for slips not in conformance with Sections 1.04-1.07 of the agreement. The unambiguous meaning of Section 2.02 is thus that "immediate credit" must be given in all other circumstances, that is, where Sections 1.04 through 1.07 are complied with by the merchant. No affidavit has been filed with this Court indicating that the bank knew these slips were not in conformance when it refused to process them. It was thus under an obligation to extend full credit in this amount less the agreed upon fee to IDL on November 1st. If the slips turned out to be at variance with the agreement, or with the law, the bank's remedy was to chargeback on the merchant account pursuant to 2.04 or demand payment at that time. Prior to that time the bank had the option of terminating the agreement at will or seeking emergent relief from a court relieving it from its contractual obligations upon a showing of irreparable harm and a probability of success on the merits of a claim that the slips were fraudulent or otherwise invalid.

The bank apparently believed that its merchant agreement with IDL was terminated effective November 1st relieving it from its obligation to process the slips. See Mr. Crippen's affidavit at Exhibit 1. I have already held that this was not so as a matter of law and thus the bank's failure to credit IDL's account in the amount of the slips less the fee on November 1st was a breach of the agreement.

As to the bank's refusal to issue the requested check to CBS, my analysis turns on the answer to two questions: One, what was the agreement of the parties as embodied in the

written merchant agreement with respect to the merchant's access to the credited funds, and two, was there any course of dealing between the parties which altered or supplemented the written agreement in these respects?

In short, what did the parties mean by immediate credit? Did they intend the merchant to have the immediate access to cash or a bank check in the amount of the "credit" or was there an agreed upon waiting period? Did the merchant's withdrawal of funds credited to his account have to await the bank's collection from the card companies who in-turn collect from the campaign contributors? In sum, did immediate credit to the merchant's account mean the merchants could withdraw the funds immediately or only that the account balance would reflect the deposit but would be frozen subject to collection and chargebacks?

In this regard, I have decided that there are genuine issues of fact material to my determination of whether failure to issue a check was a breach of the agreement between the parties. Plaintiff alleges that the bank had always or frequently issued checks on "uncollected funds." See the complaint in Civil Action 84-4685.

First, what are "uncontrollable funds," funds not withdrawn by the merchant but credited to the merchant's account or funds credited but not cleared or collected upon by the bank? Second, did this practice or course of dealing occur, and third, does this course of dealing if it existed help to elucidate the terms of the contract or is it enforceable based on the doctrine of promissory estoppel? These matters have not been adequately addressed in factual submissions or legal arguments submitted to this Court.

Further, I note that the bank's conduct in acting to seize or hand debit the TLC and IDL accounts and refusing to further credit the accounts is strong evidence in support of an interpretation of the agreement permitting immediate withdrawals by the merchant in the amount of the credit. By contrast, as I mentioned during the colloquy and counsel concedes that the evidence is to the contrary, in a certification of Gerald Rose who was an official with IDL, filed in the Superior Court on

November 3rd, 1984, IDL makes concessions to the contrary. See Crippen affidavit Exhibit D. At 3, as I stated previously, Mr. Rose states that "[t]here was no reason for the bank to debit this account, as these funds *had cleared* and were collectible as of Friday, November 2nd, 1984." (emphasis added). Paragraph 4 states that "deposits totalling $112,650 were made on Thursday, November 1, 1984". . . "which pursuant to our Bank Card Merchant Agreement" . . . "will be collectible funds on Monday morning November 5th, 1984." Paragraph 6 states that "[t]he funds that were deposited on November 1st in the amount of $112,650 and the funds that were already collectible in the amount of $170,000, totalling approximately $282,650, should be collectible on Monday morning November 5th, 1984 and, therefore, should be permitted to be withdrawn from said account."

Finally, at Paragraph 10, Mr. Rose states that the bank "has at least thirteen times in the past provided us with bank checks or certified funds for similar political broadcasts, pursuant to the Bank Card Merchant Agreement wherein funds deposited forty-eight hours earlier by way of credit card deposits could be withdrawn."

I have been unable to locate any terms regarding the date of collectibility of funds credited to a merchant account in the agreement. Nor are the intentions or course of dealing of the parties beyond dispute. Since the facts which could be the basis for interpretation or supplementation of the existing terms are either in dispute or missing from the record, both motions for partial summary judgment in this regard shall be denied.

I turn finally to the question of whether the hand debiting of funds already credited to IDL's account and, presumably, subject to withdrawal at any time, was a breach of the agreement or of the law of New Jersey. My conclusions which follow regarding the provisions of the agreement apply only to IDL in light of my finding *supra* that issues of fact exist regarding the precise time of termination of TLC's contract on November 1. My conclusion regarding New Jersey statutory and common law apply to both merchant agreements.

As to whether the bank's unilateral seizure of the IDL account was authorized under the agreement, the bank relies on the provision in Section 3.07 that upon contract termination the right of the merchant to "effect card transactions" . . . "shall cease immediately." The bank contends that since *arguendo* the merchant had the right of immediate withdrawal of funds under the agreement, such a right was part of effecting the card transaction and must cease immediately upon termination. The problem with this argument is that even if true, which I do not so find, while rendering attempted withdrawal by IDL impermissible, it in no way authorizes the bank to hand debit the entire amount placing it in a so-called "suspense account" to be held against anticipated future chargebacks. The contract language cited by the bank simply does not in any way authorize the self-help measure it took in this instance.

While the bank may indeed have had cause for suspicion regarding future calls for chargebacks, as I see it the bank had three remedies to invoke: contract termination to protect against any further obligation to accept sales slips and credit IDL's account; court ordered emergent relief prohibiting IDL from withdrawing the funds to obtain status quo under applicable standards governing such relief or chargebacks to the account when the bank's attempt to collect on the credit card slips was actually rejected. It is true when and if this occurred, it is possible that the account would be insufficient to have the chargebacks. But this is the risk the bank bargained for in return for the fee it retained on all transactions and in such an eventuality the bank could have appropriately proceeded in court against the merchant to recover the amount in chargebacks owing.

It is also true that the bank has submitted a substantial amount of evidence to the effect that chargebacks validly processed and, based on subsequent rejection in collection attempts, did exceed the amount seized resulting in an overdraft.

I am not, however, persuaded that subsequent liabilities authorized the bank to seize the funds on or about November 1st, 1984. Although as discussed *supra* the contract is unclear

regarding the meaning to be given the immediate credit to a merchant account *before* the funds have cleared, there is no question in my mind that *after* the funds have cleared they are the merchants to be withdrawn at will regardless of the possibility of future chargebacks.

Although not applicable to a situation governed by an agreement of the parties, the comments to the New Jersey Uniform Commercial Code are helpful in this regard. See N.J.S.A. 12A:4-102. N.J.S.A. 12a:4-212 provides for provisional settlements in the form of credit subject to chargebacks between parties such as the bank and the IDL in the instant case.

The New Jersey Study comment for N.J.S.A. 12A:4-102(4) states that the section "preserves the right of chargeback even though the customer has been allowed to withdraw the credit given him and has insufficient funds credited to his account to cover the chargeback." See Page 477 of that comment.

Further, the comment notes that the statute has been criticized for the very reason that it "does not give the bank a right of chargeback during the interim collection period, while it has no opportunity to learn that the item (in this case the credit card slip) is either paid or unpaid." See Page 478 of that comment. The Uniform Commercial Code Comment notes that "(s)tatistically, this practice of settling provisionally first and then a awaiting final payment is justified because (in the usual case) more than 99 percent of such cash items are finally paid," see Page 480, and by statute or agreement the bank generally retains a right to chargeback for those sales slips on which is ever it is unable to collect.

These comments and code provisions make clear to me that the sort of risks the bank bargained for under this court's interpretation of the merchant agreement is common commercial practice. It may just be that the particular contracts in question turned out to be bad risks, but this does not serve to expand the bank's remedies under a pre-existing contractual agreement.

Nor am I persuaded by the bank's argument that its actions were authorized and justified under New Jersey law regarding

the governing merchant agreement. The bank cites this Court to *FINNE Inc. v. National State Bank of Newark,* 74 N.J. Super. Page 86 (App. Div. 1962), permitting the bank to unilaterally "escrow" funds until the total amount of chargeback became known.

As I intimated during the colloquy, that case is distinguishable however, because the bank in that case *knew* that the instrument on which it had granted credit was invalid at the time it acted to debit defendant's account. Thus the bank's action was simply the equivalent of the bank's contractual right of chargeback herein. In this case, however, the bank acted on speculation and suspicion. That some of their fears turned out to be well founded does not retroactively justify the seizure of IDL's funds.

The bank also cites this Court to a variety of cases from the 19th and early 20th Century standing for the proposition that a bank has a common law right to setoff whereby it may apply a debtor's deposit to his debts.

First, I have serious doubts regarding the continued precedential value of this case law. Banking is now a highly regulated industry and while the parties have not briefed the point, I am not at all sure that such common law rights have not been either codified or preempted by subsequent state and federal statutory developments. Second, in the instant case an agreement between the parties is applicable to the transaction at issue.

Finally, I remain entirely unconvinced that a bank has such a right vis-a-vis *unmatured* claims that is where it only suspects that in the future the depositor will owe the bank money.

Lastly, the bank contends that N.J.S.A. 12A:4-208(1)(b) gives it an unconditional statutory lien in the funds entitling the bank to seize the money as it did. Section 12a:4-208(1)(b) gives the bank an automatic security interest in an item, (negotiable instrument) or its proceeds "for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of chargeback . . ." I agree with IDL that this provision is inapplicable to the instant case. The bank does have a security interest in the credit sales slip but the $170,000 it

seized was not the "proceeds" of the "item" within the meaning of the statute but instead the credit extended to the depositor/merchant.

Further, the statute says nothing about unilateral self help measures and is applicable where an agreement of the parties governs the situation.

In conclusion, the bank's motions for partial summary judgment in Civil Action 84-4685 and Civil Action 84-4849 are denied in all respects. IDL and TLC's cross-motion for partial summary judgment is granted in part and denied in part as follows: TLC's agreement was terminated on November 1st, 1984. TLC's motion for summary judgment on its breach of contract claims is denied because the precise time of termination vis-a-vis the seizure of its $30,000 remains an issue of fact to be tried. IDL's agreement was terminated on November 2nd, 1984 when it received a telegram. Consequently, its motion for summary judgment on its claims against the bank for 1) refusing to credit the $112,650 to its account and, 2) for seizure of its funds is granted but summary judgment on its claim that the bank refused to issue the requested check is denied because genuine issues of fact as per this opinion exist material to whether IDL had a right of access to all of its credited funds at that time.

Pursuant to Rule 56(c) and (d) any subsidiary matters decided herein but on which this Court declined to issue judgment, "shall be deemed established" for purposes of all further proceedings in this case.

I turn finally to the bank's motion for fees and costs currently pending before the Court. The pertinent facts are as follows: On December 13, 1984, counsel for IDL and TLC gave notice of an application for emergent relief modifying a prior state court order in Civil Action No. 84-4849. No brief was filed and the matter was carried by the Court at the suggestion of counsel for the bank to require IDL and TLC to brief certain issues. On December 26, counsel appeared before this Court in chambers. IDL and TLC requested adjournment to further support their motion. When the bank objected and the Court

presented counsel with certain scheduling problems, IDL/TLC withdrew their motion.

Arguing that the application was frivolous and that the briefing therein was woefully inadequate, counsel for the bank appear to this Court to have expended more in fees and costs in support of the instant most than they could hope to obtain if they won. I am not inclined to sanction counsel for IDL/TLC pursuant to 28 U.S.C. Section 1927 for "multiply(ing) the proceedings . . . unreasonably and vexatiously" where this Court had clearly indicated to the parties that I did not look with favor on the prior state court order restraining IDL/TLC from describing certain alleged libelous literature regarding Mr. Robert Ferguson, the bank's president. Furthermore, without commenting on the briefing in the instant case, I say with some chagrin that if this Court imposed sanctions under Section 1927 every time a woefully inadequate brief was filed with this Court the statute would be invoked more often than this Court would wish.

I also note now, as I did during the colloquy, that the bank itself didn't even file a brief when it came in before me, and counsel for TLC reminded me this morning that it didn't even file a motion formally in accordance with our local rules. Nor am I persuaded that Rule 11 sanctions should be imposed. The bank's motion for fees and costs is therefore denied.

Mr. D'Italia, may I respectfully ask you to prepare an appropriate order. I didn't know who to turn to because there are winners and losers on both sides here.

MR. D'ITALIA: I'll be pleased to do it, your Honor.

THE COURT: Thank you for your patience.

APPENDIX L

New York Times Article published on October 29, 1986

LaRouche Holdings Seen as Imperiled by Inquiry Into Fund Raising

---

By PHILIP SHENON
Special to The New York Times

WASHINGTON, Oct. 28 – The financial holdings of Lyndon H. LaRouche, Jr. have been threatened by a Federal investigation of the conspiracy theorist's secretive fund-raising efforts, according to law-enforcement officials.

But while some of Mr. LaRouche's closest associates are now under indictment on Federal fraud charges, the officials say it is far from clear that their investigation will end with the organization's collapse.

In the past, groups affiliated with Mr. LaRouche, a 64-year-old perennial Presidential candidate whose constellation of eccentric theories link such well-known figures as Henry A. Kissinger and Queen Elizabeth II to international drug trafficking, have demonstrated an extraordinary resilience.

"I'm sure this investigation is a serious blow to them," said Irwin Suall, director of fact-finding for the Anti-Defamation League of B'nai B'rith, a group that has long tracked Mr. LaRouche's activities. "The question is whether it's a knockout blow."

Fraudulent Credit-Card Billings

The Federal indictments earlier this month charged 10 LaRouche associates and two of his campaign committees with involvement in a scheme that the Government said raised more than $1 million through fraudulent credit-card billings.

Prosecutors said credit account numbers were obtained when people bought subscriptions to LaRouche publications or offered donations to supporters who roamed the nation's airports. The LaRouche organization has denied any wrongdoing and has referred to the charges as a Government "panty raid."

Federal law-enforcement officials have said their best hope of disrupting Mr. LaRouche's activities may be found in the thousands of documents seized earlier this month in a raid on his headquarters in Virginia.

"There were plenty of computer records and personal logs — really useful stuff," said a Justice Department official knowledgeable about the case. "The incredible thing about this organization is its proclivity to write everything down in little notebooks."

"The routine was to take down each and every utterance from LaRouche or his inner circle so they could later check it and match their progress against the notes," the official said.

The official, who spoke on condition that he not be named, said Federal agents were expected to spend the next several months sifting through the documents, searching for names of other LaRouche associates who might have been involved in the fund-raising scheme.

Federal agents have been largely unwilling to discuss the possibility of charges against Mr. LaRouche and other key leaders of his organization. But the Justice Department official said he would not be surprised if new indictments were handed up soon.

"The evidence we've got is likely to lead to so many individuals in so many different states it's entirely possible there will be more," the official said.

It is not clear what effect the indictments might have had on Mr. LaRouche's ability to raise money and support political candidates. Several candidates associated with Mr. LaRouche are running for office in contests across the country; their platforms often refer to conspiracies involving Communists, Zionists, gangsters, narcotics trafficking and the Rockefeller family.

Aide Sees New Public Support

One of Mr. LaRouche's spokesman, Dana Scanlon, denied recent knowledge of fund-raising efforts but said the charges might have prompted new support from the public.

"Most people in the United States of America smell a rat in this operation," she said. "When they see an organization being attacked by police-state force, they say to themselves, 'Gee, these people must be doing something interesting.' We're finding a lot of increased curiosity and interest and support."

A Justice Department official said, however, that evidence gathered in the raid on Mr. LaRouche's offices could eventually cripple the fund-raising campaign. "That was the facility from which all of their national fund-raising was done and where all of the bank-account juggling went on," the official asserted.

Federal officials said they would urge the 10 indicted LaRouche associates to become prosecution witnesses in exchange for reduced punishment.

One Defendant Is Cooperating

One of the defendants, Roy E. Frankhouser Jr., has already begun cooperating, the Federal Bureau of Investigation said. According to the Anti-Defamation League, Mr. Frankhouser has had extensive ties with the American Nazi Party and the Ku Klux Klan, and has more recently worked with Mr. LaRouche.

Law-enforcement officers and others say they are interested in knowing what effect the indictment has had on Mr. LaRouche himself, whose views have long perplexed conventional politicians and political scholars.

Mr. LaRouche, a former member of the radical left, has long said he fears he is a target of assassins. But he seemed to take that fear a step further on Oct. 7, when he issued a statement warning that "any attempt to arrest me would be an attempt to kill me."

Ms. Scanlon, the LaRouche spokesman, would not rule out the use of violence if Federal agents should try to arrest Mr. LaRouche.

APPENDIX M

CONSTITUTIONAL PROVISIONS AND INTERNATIONAL LAW INSTRUMENTS INVOLVED

U.S. Const. amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United Nations Charter, Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969);

Article 1:

> The Purposes of the United Nations are: . . .
>
> (3) To achieve international cooperation of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. . . .

Article 55:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . .
>
> (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56:

> All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Universal Declaration of Human Rights, Dec. 10, 1948; G.A. Res. 217A (III), U.N. Doc. A/810 at 71:

Article 19:

> Everyone has the right of freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20:

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 28:

> Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29:

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30:

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (*entered into force* March 23, 1976):

Article 19:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order *(ordre public),* or of public health or morals.

Organization of American States Charter, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 (*entered into force* Dec. 13, 1951) and *amended* by the Protocol of Buenos Aires, Feb. 27, 1967, T.I.A.S. No. 6847, O.A.S.T. No. 1-A, O.A.S.O.R., O.E.A./Ser. A/2, add. 2 (*entered into force* Feb. 27, 1970):

Article 5:

The American States reaffirm the following principles:

(j) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex;

Article 16:

Each State has the right to develop its cultural, political and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality.

American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L/V/II 23, doc. 21, rev. 2:

Article IV:

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Article XXII:

> Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

American Convention on Human Rights, Nov. 22 1969, O.A.S. T.S. No. 36 at 2, O.A.S. Off. Rec. OEA/Ser. L/V/II 23 doc. 21, rev. 2 (*entered into force* July 18, 1978):

Article 13:

1. Everyone shall have the right to freedom of thought and expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary in order to ensure:

   (a) The respect for the rights or reputations of others; or

   (b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject to law

to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

European Convention for the Protection of Human Rights, Sept. 3, 1953, 213 U.N.T.S. 221:

Article 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

Article 13:

> Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Dec. CAB/LEG/67/3 rev. 5:

Article 2:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 9:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Final Act, Conference on Security and Cooperation in Europe, Helsinki, August, 1975, *reprinted in* 73 U.S. State Dept. Bull. 323 (1975):

Principle VII:

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development. Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his conscience.

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere. The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation among themselves as among all States.

They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

They confirm the right of the individual to know and act upon his rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity

with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including *inter alia* the International Covenants on Human Rights, by which they may be bound.

Principle X:

The participating States will fulfil in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties.

In exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law; they will furthermore pay due regard to and implement the provisions in the Final Act of the Conference on Security and Co-operation in Europe.

• • •